



## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("**Agreement**") is effective as of the date of the Mayor's signature below and is between the City of Everett, a Washington municipal corporation (*the "City"*), and the person identified as Service Provider in the Basic Provisions below ("**Service Provider**"). This Agreement is for the purpose of the Service Provider providing the services as set forth in this Agreement. This Agreement includes and incorporates the Basic Provisions, the attached General Provisions, and the documents listed as Exhibits in the Basic Provisions.

BASIC PROVISIONS	
Service Provider	Hultz BHU Engineers, Inc
	1111 Fawcett Avenue, Suite 100
	Tacoma, Washington 98402
	rickh@hultzbhu.com
City Project Manager	James Sauls
	City of Everett -- Transit
	3201 Smith Avenue
	Everett, WA 98201
Brief Summary of Scope of Work	jsauls@everettwa.gov
	Design services for Everett Station HVAC controls replacement and maintenance
Completion Date	December 31, 2024
Extension Provision	N/A

BASIC PROVISIONS	
<b>Maximum Compensation Amount</b>	\$194,090.00
<b>Exhibits</b>	<p>Exhibit A: Negotiated Scope - Everett HVAC Projects – Everett Station</p> <p>Exhibit B: Hultz BHU Engineers Inc Response dated October 24, 2023</p> <p>Exhibit C: Request for Qualifications #2023-093</p> <p>Exhibits include Federal Transit Administration Clauses.</p>
<b>Service Provider Insurance Contact Information</b>	Allison Barga
	360-626-2007
	allison.barga@assuredpartners.com
<b>Additional Provision(s)</b>	N/A

<p><b>State Retirement Systems (must answer both questions)</b></p>	<p>Does Service Provider have 25 or more employees?</p> <p><b>Answer: No</b></p> <p>If Service Provider has less than 25 employees, did any Service Provider Personnel who will work under this Professional Services Agreement retire under a DRS retirement system?</p> <p><b>Answer: No</b></p> <p>“DRS retirement system” refers to any of the following Public Employers’ Retirement System (PERS), School Employees’ Retirement System (SERS), Teachers’ Retirement System (TRS), and Law Enforcement Officers and Fire Fighters plan (LEOFF).</p> <p>“Service Provider Personnel” includes Service Provider employees and owners (such as shareholders, partners or members). If Service Provider is a sole proprietor, then “Service Provider Personnel” refers to the sole proprietor.</p>
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## **END OF BASIC PROVISIONS**

IN WITNESS WHEREOF, the City and Service Provider have executed this Agreement, which includes and incorporates the above Basic Provisions, the attached General Provisions, and the documents listed as Exhibits in the Basic Provisions.

**CITY OF EVERETT  
WASHINGTON**

**HULTZ BHU ENGINEERS INC**



\_\_\_\_\_  
Cassie Franklin, Mayor

02/15/2024

\_\_\_\_\_  
Date

ATTEST



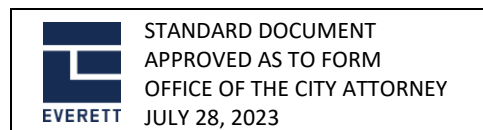
\_\_\_\_\_  
Office of the City Clerk

Signature: Richard Hultz

Name of Signer: Rick Hultz

Signer's Email Address: rickh@hultzbhu.com

Title of Signer: President





**ATTACHMENT**  
**PROFESSIONAL SERVICES AGREEMENT**  
**(GENERAL PROVISIONS v.071423.P1)**

1. **Engagement of Service Provider.** The City hereby agrees to engage Service Provider, and Service Provider hereby agrees, to perform the work in a competent and professional manner and provide the services described in the exhibit(s) to this Agreement. The work so described is hereafter referred to as "Work".
  - A. Without a written directive of an authorized representative of the City, Service Provider shall not perform any services that are in addition to, or beyond the scope of, the Work. If, and to the extent, the Work includes the design of a public work or improvement, in whole or in part, Service Provider's design shall be reasonably accurate, adequate and suitable for its intended purpose.
  - B. If Service Provider's proposal or other document generated by Service Provider is incorporated or attached as an exhibit or part of any exhibit to this Agreement, then such proposal or document is part of this Agreement solely to the extent that it describes the Work, the Work schedule, and the amounts or rates to be paid for such Work. Service Provider expressly agrees that no terms or conditions from such proposal or document are incorporated or included into this Agreement, unless the to-be-included term or condition is specifically referenced in the "Additional Provision(s)" portion of the Basic Provisions.
  - C. Work or requirements described in a scope of work document attached as an exhibit to this Agreement in aspirational or preferential terms (such as "it is desired that Supplier will," "it is preferred that Supplier will" or similar language) is deemed to be mandatory, unless otherwise provided in the "Additional Provision(s)" portion of the Basic Provisions.
  - D. In the event of difference or conflict between parts of this Agreement, Service Provider shall be bound by whichever is more stringent on Service Provider, except that the following provisions in the Basic Provisions shall always govern: the Completion Date, the Maximum Compensation Amount, the Extension Provision, and the Additional Provisions.
2. **Intellectual Property Rights.** Reports, drawings, plans, specifications and any other intangible property created in furtherance of the Work are property of the City for all purposes, whether the project for which they are made is executed or not, and may be used by the City for any purpose. Unless otherwise expressly agreed in writing, all intellectual property rights in such documents or intangible property created pursuant to this Agreement, or for the City of Everett, belong to the City of Everett. Service Provider retains any intellectual property rights in documents and intangible property created by Service Provider prior to engagement, or not created by Service Provider for its performance of this Agreement.
3. **Time of Beginning and Completion of Performance.** This Agreement shall commence as of the date of mutual execution of this Agreement and shall be completed by Completion Date stated in the Basic Provisions. This Agreement may be extended as set forth in the Basic Provisions.
4. **Compensation.**
  - A. The City shall pay Service Provider only for completed Work and for services actually rendered which are described herein. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment and incidentals necessary to complete the Work.
  - B. Service Provider shall be paid such amounts and in such manner as described in the exhibit(s) to this Agreement.

- C. Service Provider may receive payment as reimbursement for Eligible Expenses actually incurred. "Eligible Expenses" means those expenses as set forth in an exhibit to this Agreement or such expenses as are approved for reimbursement by the City in writing prior to the expense being incurred. An expense shall not be reimbursed if: (1) the expense is not identified as an Eligible Expense; (2) the expense exceeds the per item or cumulative limits for such expense if it is identified as an Eligible Expense; or (3) the expense was not approved in writing by an authorized City representative prior to Service Provider incurring the expense. If, and to the extent, overnight lodging in western Washington is authorized, Service Provider is strongly encouraged to lodge within the corporate limits of City. When authorized, Service Provider will be reimbursed 100% of lodging expense, if lodged within the corporate limits of the City, but Service Provider will be reimbursed 50% of lodging expense when lodged outside the corporate limits of the City. If authorized, the City may (at its sole option) obtain or arrange air travel for Service Provider.
  - D. Total compensation, including all services and expenses, shall not exceed the Maximum Compensation Amount in the Basic Provisions.
  - E. If Service Provider fails or refuses to correct its work when so directed by the City, the City may withhold from any payment otherwise due an amount that the City in good faith believes is equal to the cost to the City of correcting, re-procuring, or remedying any damage caused by Service Provider's conduct.
5. **Method of Payment.**
- A. To obtain payment, Service Provider shall (a) file its request for payment, accompanied by evidence satisfactory to the City justifying the request for payment; (b) submit a report of Work accomplished and hours of all tasks completed; (c) to the extent reimbursement of Eligible Expenses is sought, submit itemization of such expenses and, if requested by the City, copies of receipts and invoices; and (d) comply with all applicable provisions of this Agreement. Service Provider shall be paid no more often than once every thirty days.
  - B. All requests for payment should be sent to the City Project Manager Address in the Basic Provisions.
6. **Submission of Reports and Other Documents.** Service Provider shall submit all reports and other documents as and when specified in the Scope of Work. This information shall be subject to review by the City, and if found to be unacceptable, Service Provider shall correct and deliver to the City any deficient Work at Service Provider's expense with all practical dispatch. Service Provider shall abide by the City's determinations concerning acceptability of Work.
7. **Termination of Contract.** City reserves the right to terminate this Agreement at any time by sending written notice of termination to Service Provider ("Notice"). The Notice shall specify a termination date ("Termination Date") at least fourteen (14) days after the date the Notice is issued. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Service Provider (whether by email, mail, delivery or other method reasonably calculated to be received by Service Provider in a reasonably prompt manner) or three calendar days after issuance of the Notice. Upon the Notice Date, Service Provider shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Service Provider's material breach, Service Provider shall be paid or reimbursed for: (a) all hours worked and Eligible Expenses incurred up to the Notice Date, less all payments previously made; and (b) those hours worked and Eligible Expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. Notices under this Section shall be sent by the United States Mail to Service Provider's address provided herein, postage prepaid, or by delivery. In addition, Notices may also be sent by any other method reasonably believed to provide Service Provider actual notice in a timely manner, such as email. The City does

not by this Section waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provision of this Agreement. At its sole option, and without limitation of or prejudice to any other available remedy or recourse, the City may deduct from the final payment due Service Provider (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other backcharges or credits.

8. **Changes.** The City may, from time to time, unilaterally change the scope of the services of Service Provider to be performed hereunder. Such changes, including any increase or decrease in the scope of work (and resulting increase or decrease in compensation), shall: (a) be made only in writing and signed by an authorized City representative, (b) be explicitly identified as an amendment to this Agreement and (c) become a part of this Agreement.
9. **Subletting/Assignment of Contracts.** Service Provider shall not sublet or assign any of the Work without the express, prior written consent of the City.
10. **Indemnification.** Except as otherwise provided in this Section, Service Provider hereby agrees to defend and indemnify and save harmless the City from any and all Claims arising out of, in connection with, or incident to any negligent or intentional acts, errors, omissions, or conduct by Service Provider (or its employees, agents, representatives or subcontractors/subconsultants) relating to this Agreement, whether such Claims sound in contract, tort, or any other legal theory. Service Provider is obligated to defend and indemnify and save harmless the City pursuant to this Section whether a Claim is asserted directly against the City, or whether it is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City. Service Provider's duty to defend and indemnify and save harmless pursuant to this Section is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of Service Provider. Service Provider's obligations under this Section shall not apply to Claims caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) such Claim is caused by or results from the concurrent negligence of (a) Service Provider, its employees, subcontractors/subconsultants or agents and (b) the City, then Service Provider's liability under this Section shall be only to the extent of Service Provider's negligence. Solely and expressly for the purpose of its duties to indemnify and defend and save harmless the City, Service Provider specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. Service Provider recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this Section: (1) "City" includes the City, the City's officers, employees, agents, and representatives and (2) "Claims" include, but is not limited to, any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damages, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages or infringement or misappropriation of any patent, copyright, trade secret, or other proprietary right. If, and to the extent, Service Provider employs or engages subconsultants or subcontractors, then Service Provider shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) shall expressly agree to defend and indemnify and save harmless the City to the extent and on the same terms and conditions as Service Provider pursuant to this Section. The provisions of this Section shall survive the expiration or termination of this Agreement.
11. **Insurance.**

- A. Service Provider shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Service Provider's own cost and expense, the policies of insurance as set forth in this Section with companies authorized to do business in the State of Washington, which are rated at least "A-" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to the City.
1. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, Service Provider shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless Service Provider covers such employees.
  2. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.
  3. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.
  4. Professional Errors and Omissions Insurance in an amount not less than \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. Such coverage may be written on a claims made basis.
- B. The above liability policies shall be primary as to the City and shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Service Provider to furnish the required insurance during the term of this Agreement.
- C. Upon written request by the City, the insurer or its agent will furnish, prior to or during any Work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.
- D. The Description of Operations on the Certificate of Insurance must substantially read as follows: "The above commercial general and auto liability policies are primary as to the City of Everett; have the City of Everett, its officers, employees, agents, and volunteers as additional insureds; and contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City of Everett."
- E. Prior to Service Provider performing any Work, Service Provider shall provide the City or the City's designee with a Certificate of Insurance acceptable to the City Attorney evidencing the required insurance. Service Provider shall provide the City or the City's designee with either (1) a true copy of an endorsement naming the City of Everett, its officers, employees, agents and volunteers as Additional Insureds on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City or the City's designee of any certificate showing less coverage than required is not a waiver of Service Provider's obligations to fulfill the requirements.
- F. If the policy listed above, Professional Errors and Omissions Insurance, is on a claims made policy form, the retroactive date on the policy shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as

the original policy provided. The extended reporting or discovery period on a claims made policy form shall not be less than 36 months following expiration of the policy.

- G. Service Provider certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. Service Provider shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Service Provider shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.
  - H. In case of the breach of any provision of this Section, the City may, at its option and with no obligation to do so, provide and maintain at the expense of Service Provider, such types of insurance in the name of Service Provider, and with such insurers, as the City may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to Service Provider under this Agreement or may demand Service Provider to promptly reimburse the City for such cost.
12. **Risk of Loss.** Service Provider shall be solely responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be solely responsible for any loss of or damage to Service Provider's materials, tools, or other articles used or held for use in connection with the work.
13. **Independent Contractor.**
- A. This Agreement neither constitutes nor creates an employer-employee relationship. Service Provider must provide services under this Agreement as an independent contractor. Service Provider must comply with all federal and state laws and regulations applicable to independent contractors including, but not limited to, the requirements listed in this Section. Service Provider agrees to indemnify and defend the City from and against any claims, valid or otherwise, made against the City because of these obligations.
  - B. In addition to the other requirements of this Section, if Service Provider is a sole proprietor, Service Provider agrees that Service Provider is not an employee or worker of the City under Chapter 51 of the Revised Code of Washington, Industrial Insurance for the service performed in accordance with this Agreement, by certifying to the following:
    - (1) Service Provider is free from control or direction over the performance of the service; and
    - (2) The service performed is outside the usual course of business for the City, or will not be performed at any place of business of the City, or Service Provider is responsible for the costs of the principal place of business from which the service is performed; and
    - (3) Service Provider is customarily engaged in an independently established business of the same nature as the service performed, or has a principal place of business for the service performed that is eligible for a business deduction for federal income tax purposes; and
    - (4) On the effective date of this Agreement, Service Provider is responsible for filing a schedule of expenses, for the next applicable filing period, with the internal revenue service for the type of service performed; and
    - (5) By the effective date of this Agreement or within a reasonable time thereafter, Service Provider has established an account with the department of revenue and other state agencies, where required, for the service performed for the payment of all state taxes normally paid by employers and businesses and has registered

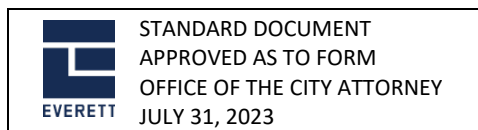
for and received a unified business identifier number from the state of Washington; and

- (6) By the effective date of this Agreement, Service Provider is maintaining a separate set of records that reflect all items of income and expenses of the services performed.
- C. Any and all employees of Service Provider, while engaged in the performance of any Work, shall be considered employees of only Service Provider and not employees of the City. Service Provider shall be solely liable for any and all claims that may or might arise under the Worker's Compensation Act on behalf of such employees or Service Provider, while so engaged and for any and all claims made by a third party as a consequence of any negligent act or omission on the part of Service Provider's employees, while so engaged on any of the Work.
- D. Service Provider shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City free, clear and harmless from all actions, claims, demands and expenses arising out of such act, and rules and regulations that are or may be promulgated in connection therewith.
- E. Service Provider assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by Service Provider and as to all duties, activities and requirements by Service Provider in performance of the Work and Service Provider shall assume exclusive liability therefor, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.
14. **Employment/Conflict of Interest.** Service Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Service Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Service Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee. Further, it is recognized that Service Provider may or will be performing professional services during the term of this Agreement for other parties; however, such performance of other services shall not conflict with or interfere with Service Provider's ability to perform the Work. Service Provider agrees to resolve any such conflicts of interest in favor of the City.
15. **Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, Service Provider shall make available to the City for the City's examination all of Service Provider's records and documents with respect to all matters covered by this Agreement and, furthermore, Service Provider will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.
16. **City of Everett Business License.** Service Provider agrees to obtain a City of Everett business license prior to performing any work pursuant to this Agreement.

17. **State of Washington Requirements.** Service Provider agrees to register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.
18. **Compliance with Federal, State and Local Laws.** Service Provider shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.
19. **Compliance with the Washington State Public Records Act.** Service Provider acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the "Act"). All records owned, used or retained by the City are public records subject to disclosure unless exempt under the Act, whether or not such records are in the possession or control of the City or Service Provider. Service Provider shall cooperate with the City so that the City may comply with all of its obligations under the Act. Within ten (10) days after receipt of notice from the City, Service Provider shall deliver to the City copies of all records relating to this Agreement or relating to the Work that the City determines qualify as the City's public records under the Act. If the City receives a public records request relating to this Agreement or relating to the Work, the City shall seek to provide notice to Service Provider at least ten (10) days before the City releases records pursuant to such public records request, but in no event will the City have any liability to Service Provider for any failure of the City to provide such notice. In addition to its other indemnification and defense obligations under this Agreement, Service Provider shall indemnify and defend the City from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage arising from or relating to any failure of Service Provider to comply with this Section.
20. **Compliance with Grant/Loan Terms and Conditions.** Service Provider shall comply with any and all terms, conditions, terms and requirements of any federal, state or other agency grant or loan that wholly or partially funds Service Provider's work hereunder. If the grant or loan requires that the agency be a third party beneficiary to this Agreement, then the agency is a third party beneficiary to this Agreement.
21. **Equal Employment Opportunity.** Service Provider shall not discriminate against any employee, applicant for employment, or other person on the basis of race, color, religion, sex, age, disability, marital state, or national origin or other circumstance prohibited by applicable federal, state, or local law or ordinance. Service Provider shall comply with and shall not violate any applicable provisions of Chapter 49.60 RCW, Title VI of the Civil Rights Act of 1964, and all applicable federal, state, or local law or ordinance regarding non-discrimination.
22. **Waiver.** Any waiver by Service Provider or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.
23. **Complete Agreement.** This Agreement contains the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement or negotiation whether oral or written not set forth herein.
24. **Modification of Agreement.** This Agreement may only be modified as provided in Section 8, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and Service Provider.
25. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, and the remainder of the Agreement shall remain in full force and effect.
26. **Notices.**
  - A. Notices to the shall be sent to the City Project Manager address in the Basic Provisions.

- B. Notices to Service Provider shall be sent to its address in the Basic Provisions.
27. **Venue**. Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of Snohomish County, Washington.
28. **Governing Law**. The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.
29. **City Marks**. Service Provider will not use any trade name, trademark, service mark, or logo of the City (or any name, mark, or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.
30. **No Personal Liability**. No officer, agent or employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.
31. **Signature/Counterparts**. This Agreement and any amendment thereto may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document. AdobeSign signatures are fully binding. Any ink, electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as an original signature.
32. **Standard Document**. This General Provisions document is a standard City form document. No changes by Service Provider are authorized to the General Provisions. Notwithstanding anything to the contrary in this Agreement, in the event that Service Provider makes unauthorized changes to the General Provisions, such changes are deemed to have never been made and the contract between the City and Service Provider is deemed to be the unchanged standard City form General Provisions in version stated below, regardless of whether the City signs this Agreement in a form that may contain the unauthorized changes.

**END OF GENERAL PROVISIONS  
(v.071423.P1)**





**EXHIBIT A**  
**PROFESSIONAL SERVICES AGREEMENT**  
**(ATTACHED)**



January 4, 2024

City of Everett  
Facilities and Property Management  
802 E. Mukilteo Blvd  
Everett, WA 98203

Attention: Josh O'Neil

Subject: **Everett HVAC Projects – Everett Station**  
Engineering Services Proposal

Dear Josh:

Thank you for this opportunity to work with you on this project.

### **Project Description**

Work is as described in City of Everett Request for Qualifications, RFQ No.2023-093.

This proposal addresses one of the three City of Everett facilities in the RFQ:

- **Everett Station Controls Replacement and Maintenance:** replace the existing controls at the Everett Station located at 3201 Smith Ave, Everett, WA 98201. The scope includes design, engineering, permitting, construction documents, and construction management for the replacement of direct digital (DDC) control system along with VAV controllers. The design and construction for this portion is funded by a Federal Transit Administration grant and has associated non-negotiable clauses that must be agreed to. This facility will be bid separately from the other two facilities in the RFP.

### **Scope of Services**

**Design Phase:** Provide engineering, plans, and specifications to allow for project permitting, bidding and construction. Documents will be submitted for your review at the following phases: schematic design, design development, permit, and construction document phases. Construction cost estimates are included, as are project schedules. Our work includes submitting plans for permitting and coordinating the work with you and City of Everett staff. We assume that the City will provide the Division 00 specification documents (i.e. contract, general conditions, bid form, etc.) and portions of Division 01, which we will incorporate into the bid package. One site meeting is included, and other design meetings are anticipated to be virtual. A review of compliance with the State Building Performance Standard Compliance would be provided.

**Bid Phase:** Services include a review of substitution requests, attendance at the pre-bid meeting, issuing any required addenda, and a review of bids.

**Construction Phase:** Services include attendance at the pre-construction meeting, review of submittals, site visits (and meetings) during construction, general coordination, responding to contractor requests for information (RFI's), punchlist review, final back check review, and a review of closeout documents. 10 site visits are included for construction support.

### **Proposed Fee**

Basic Services: We propose to provide our basic design, bid and construction services on a lump sum fee basis, with our fee based off a percentage of the construction cost (from the State Public Works fee schedule) as applied to the project MACC (values from the RFQ. We propose to use schedule B from the fee schedule with a 3% add as a remodel project.

Facility	MACC	Fee Basis	Fee
Everett Station	\$1,498,762	9.95% + 3%	\$ 194,090
<b>Total</b>			<b>\$ 194,090</b>

Extra Services not included within the Basic Services Fee include the following:

- Initial State Clean Building Performance Standard Compliance Review: We would perform the analysis to provide a weather normalized EUI for each building, and compare to the adjusted EUI target for each building. This would identify whether additional energy savings measures would be required for compliance. Proposed fee: \$4,200.
- **Total: \$ 4,200**

Reimbursable items (to be billed at cost plus 10%):

- Travel Mileage: We assume a budget of \$1,600, and will invoice from the IRS mileage rates
- Printing (Review/Permit Sets): We assume a budget of \$ 1,000
- **Total \$2,600**

### **Possible Added Services**

Possible Added Services that the City may choose to include:

1. Added Site Visits: Depending on the qualifications of the Contractor performing the work of this project, as well as the complexity of the building systems, more site visits may be necessary to allow adequate review of the work being performed than is included in the Basic Services. The number of site visits in our basic proposal has been quantified to match the fee provided (which is based on State fee guidelines). We would propose an added fee of \$ 600 per additional site visit.

See the attached for our 2024 hourly rates for any hourly work that may be added to the project scope. We assume that for work occurring past June 2024 an adjustment will be considered due to cost escalation.

### **Assigned Staff**

Hultz   BHU key staff:	Principal	Rick Hultz, PE
	Senior Engineer/PM	Michael Tagles, PE
	Senior Electrical Engineer	Tom Urquhart, PE

**Assumptions/Qualifiers**

1. We assume that as-builts of the building and the mechanical and electrical systems are available, and are reasonably accurate. We have included time for field reviews of the buildings but not time to create as-builts of the existing systems.
2. Any past hazardous material surveys will be provided by the City.
3. Fire sprinkler and Fire alarm system work will be covered by a performance specification with design by the installing contractor.
4. No utility locates are included in our scope.
5. Our work is limited to systems inside the building footprint.
6. We assume that the existing electrical service is adequate to support to project work.
7. No unusual or detrimental conditions exist at the area of work requiring any analysis or design consideration by us (e.g. existing code violations, power quality issues, existing failed components, etc.).
8. Permit fees are not included. Note that the efforts to respond to resolve permit comments are included in this proposal.
9. Commissioning specifications are for code required commissioning (done by a firm independent of the installing HVAC/Controls contractor). Additional levels of project commissioning may be provided at the City's request.
10. We will provide you AutoCAD as-builts (based on contractor mark-ups) at the completion of the project.
11. If there are city facility design standards we are to adhere to, we will be provided those in writing prior to us starting our design.
12. We assume that you will review our progress submittals and final design documents to confirm their design intent is being met.
13. No construction will begin or ordering of materials will begin until all permits have been obtained and permit comments resolved.
14. Project will not be bid until all permit comments have been resolved.
15. Support of a formal Value Engineering process is not included.
16. LEED and related processes are not included.
17. A calculation to evaluate compliance with the State Clean Building Performance Standard (CBPS) is included in the basic services. However, if a building does not comply with the CBPS, the efforts to identify and design these additional measures needed to comply are not included. These efforts, including Energy Modelling for the CBPS, are not included but can be provided if needed as an added service.

We appreciate this opportunity to work with you; Let us know if you have any questions.

Sincerely,  
**Hultz|BHU Engineers Inc.**



Michael Tagles, PE  
Associate Principal

Attachments: Hourly Rates, 1 page



## 2024 HOURLY BILLING RATES

Principal	\$ 225.00
Associate Principal	\$ 185.00
Senior Engineer	\$ 160.00
Senior Project Manager	\$ 155.00
Project Engineer	\$ 150.00
Project Manager	\$ 135.00
Senior Designer	\$ 120.00
Project Designer	\$ 110.00
CAD Technician	\$ 100.00
Clerical	\$ 70.00

**EXHIBIT B**  
**PROFESSIONAL SERVICES AGREEMENT**  
**(ATTACHED)**



## ENGINEERING TEAM

**RFQ No. 2023-093**

**Statement of Qualifications**

### CONTACT INFORMATION

Rick Hultz, President  
rickh@hultzbhu.com | 253.383.3257

## SECTION 1 | QUALIFICATIONS & EXPERIENCE

Hultz|BHU Engineers is a mechanical/electrical engineering consulting firm, located in Tacoma, Washington. Established in 1990, Hultz|BHU Engineers has been providing innovative, sustainable, and quality engineering for decades. Hultz|BHU Engineers is especially experienced in handling unique projects involving phased construction, alterations to existing facilities, and work in occupied buildings.

We specialize primarily in municipal facilities, where we are working with long term facilities, and often those with limited budgets; requiring careful planning and efficient solutions. We understand that the choices we make, and the designs we create, will be with Owners long into the future. So we evaluate carefully our decisions and work closely with Owners and their staff.

Our work includes all types of building mechanical and electrical systems, life cycle cost analysis, building assessments, cost estimating, and commissioning work for all types of public facilities. Our projects have included pre-design studies, remodels, additions, miscellaneous mechanical and electrical repairs, as well as new facilities.

We have a high degree of proficiency in evaluating field conditions and designing project remodels and specific system replacements. Our designs are innovative, but also practical, and are created to suit each client's unique situation and budget.

Mechanical systems we have designed include HVAC systems, boiler systems, chiller systems, steam piping, plumbing systems, specialized exhaust systems, fueling systems, shop piping systems, fire protection systems, energy management systems, as well as other specialized mechanical systems.



### SERVICES PERFORMED

#### CONSULTING

- Sustainable Design
- Commissioning
- Value Analysis
- Value Engineering
- Constructability Review
- Energy Audits & Modeling
- Life Cycle Cost Analysis
- Phasing Coordination
- Infrastructure Planning
- LEED® Coordination
- Feasibility Studies
- Energy Code Compliance
- Project Management
- Cost Estimating
- Construction Administration
- Existing Conditions Assessment
- Bid Phase Services
- Schematic Design
- Code Review & Analysis

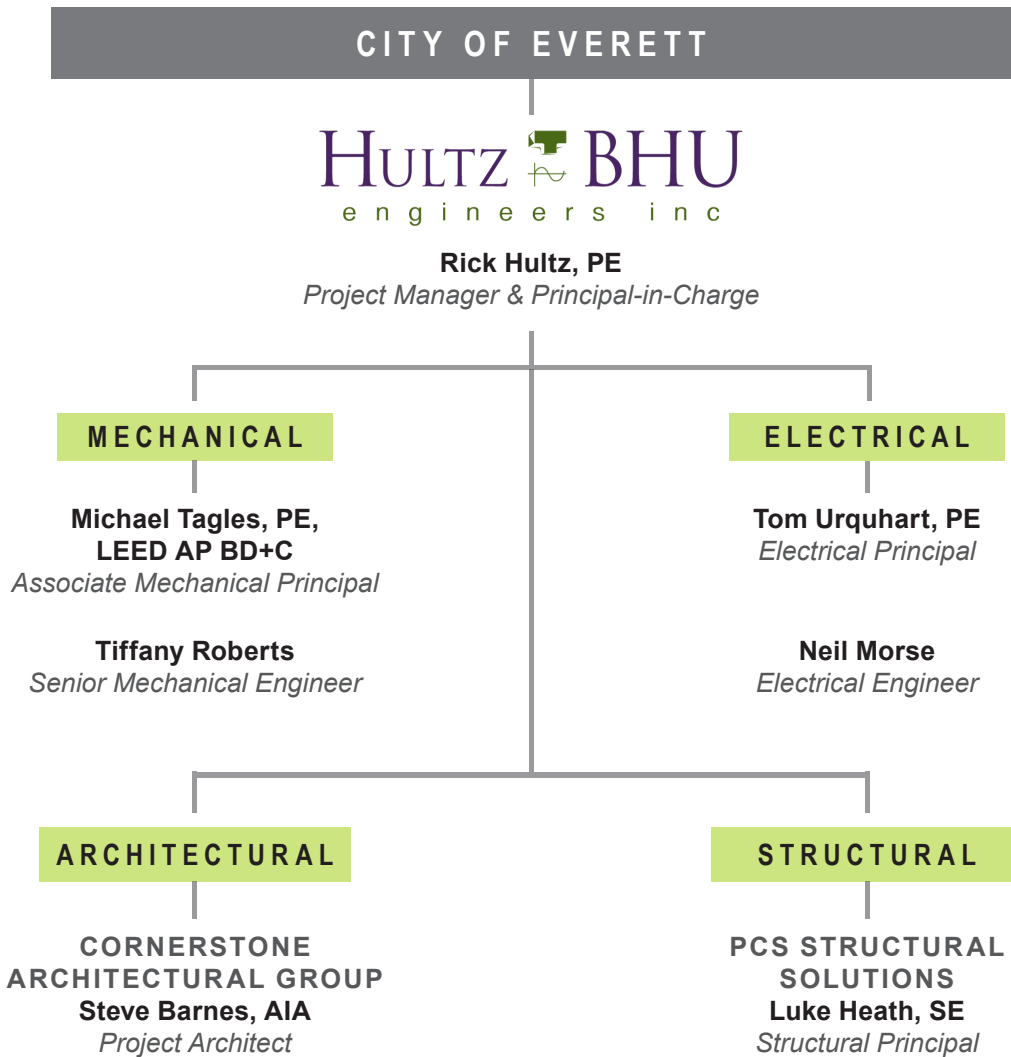
#### MECHANICAL

- Heating, Ventilation, and Air Conditioning Systems (HVAC)
- Fire Sprinkler & Suppression Systems
- Controls
- Boiler & Chiller Plant Systems
- Hydronic
- Plumbing System Design
- Specialized Exhaust Systems
- Heat Recovery
- Indoor Air Quality
- Shop Piping Systems
- Fuel Piping
- Steam Piping
- Domestic Water Service & Distribution
- Energy Management Control Systems
- Utility Rebate Coordination

#### ELECTRICAL

- Electrical Power Distribution Systems
- Generator Systems
- Photovoltaic Systems
- Site Power & Signal Utilities
- Interior/Exterior Lighting Design
- Interior/Exterior Lighting Analysis
- Communication Systems: Voice/Data Signaling (Telephone, Fiber Optics, Ethernet, LAN Systems)
- Fire Alarm System Planning & Design
- Lighting Controls
- Security & Access Control Systems
- Closed Circuit Television Systems
- Intercom & Clock Program Systems





Hultz|BHU Engineers will be acting as the Prime Consultant for the three HVAC projects for the City of Everett. Over the years, we have been involved in the mechanical and electrical remodels, replacements, repairs, and upgrades to numerous municipal and government facilities. Our previous work has provided us with exposure to all types of project requirements and procedures, providing consistent and strong mechanical systems that fit your city's needs.

As the Project Manager and Principal-in-Charge, Rick Hultz will oversee and manage all personnel throughout the project. Having over forty years of experience in project management and the design of mechanical systems, Rick is a critical asset to our team.

Our proposed Mechanical team includes Michael Tagles and Tiffany Roberts. They will be responsible for the specific design of this project's HVAC system, working closely with the City of Everett staff. Both team members have extensive experience with the facilities proposed, and understand the unique needs that these library and public safety facilities require. Our team also includes, Tom Urquhart as the Electrical Principal who will oversee all electrical work, as well as Neil Morse, Electrical Engineer, who will be responsible for the necessary electrical system upgrades for these HVAC replacements. We have also included a Project Architect and Structural Engineer to support our efforts in successfully completing these projects. All of our team members have completed numerous projects like this in the past.

By organizing our team in this manner, we are able to provide the City of Everett with the experience required for these types of project. With our MEP team "In-House", we can establish constant communication within our firm, and are able to successfully complete these projects in a timely manner. Our team provides the knowledge, skill, and capacity to complete these HVAC projects for your city. Years of experience, an extensive number of successful similar projects, as well as the knowledge of these types of system replacements is what we will bring to this project.



### **Rick Hultz, PE** ***Project Manager & Principal-in-Charge***

Rick Hultz has been active in the design of building mechanical systems for more than forty years, working as principal engineer for Hultz & Associates and Hultz|BHU Engineers for the last thirty-two years, and prior to that as lead mechanical engineer for another local architectural/engineering firm.

Rick's experience includes the design of building HVAC systems, exhaust systems, boiler/chiller plants, plumbing systems, fire protection systems, and controls. In addition, he provides energy studies, cost estimating, and construction reviews. His projects have ranged from as large as 500,000 square feet, involving multiple buildings with phased construction, as well as numerous remodels and additions.

### **RELEVANT PROJECT EXPERIENCE**

- Kitsap County Jail | HVAC Replacement  
*Role: Project Manager & Principal-in-Charge*
- Pierce County | Remann Hall | HVAC Replacement  
*Role: Project Manager & Principal-in-Charge*
- City of Tacoma | Police Fleet Warehouse Facility | HVAC Replacement  
*Role: Principal-in-Charge*
- Tacoma Public Library | HVAC Replacement at 3 Libraries  
*Role: Principal-in-Charge*
- WMD | Camp Murray | Emergency Operations Center | HVAC Improvements  
*Role: Project Manager & Principal-in-Charge*
- Lakehaven | Lakota Maintenance Building | HVAC Replacement & Re-Roof  
*Role: Principal-in-Charge*
- City of Forks | Correctional Center | HVAC Replacement  
*Role: Project Manager & Principal-in-Charge*
- Tacoma Dome & Exhibition Center | Mechanical Renovation  
*Role: Project Manager & Principal-in-Charge*
- Pierce County | Spanaway Sheriff Precinct | Improvements  
*Role: Principal-in-Charge*
- Northshore Parks & Rec | Northshore Senior Center | HVAC Replacement  
*Role: Principal-in-Charge*
- Everett Community College | Olympus Hall | HVAC Replacement  
*Role: Principal-in-Charge*
- SPS | Lafayette Elementary School | Seismic & HVAC Upgrades  
*Role: Principal-in-Charge*
- Pierce County | 950 Fawcett Building | HVAC Improvements  
*Role: Project Manager & Principal-in-Charge*
- Longview SD | Mark Morris High School | HVAC Replacement  
*Role: Principal-in-Charge*
- DSHS | Rainier School | Central Kitchen | HVAC Replacement  
*Role: Project Manager & Principal-in-Charge*
- City of Yakima | Municipal Building | HVAC Improvements  
*Role: Project Manager & Principal-in-Charge*

### **YEARS WITH HULTZ|BHU**

32 Years

### **EDUCATION/REGISTRATION**

B.S., Mechanical Engineering,  
University of Washington, 1981

Professional Mechanical Engineer:  
Washington 1985, Oregon 1988,  
Colorado 1999, Illinois 2000,  
California 2005, Florida 2017,  
Hawaii 2017, Texas 2018, Arizona  
2019, Idaho 2020, New Mexico  
2021, Nevada 2021

### **PROFESSIONAL ASSOCIATIONS**

Member, National Society of  
Professional Engineers (NSPE)

Member, American Society of  
Mechanical Engineers (ASME)

Member, American Society of  
Heating, Refrigeration, and Air  
Conditioning Engineers (ASHRAE)

Member, Society of Fire Protection  
Engineers (SFPE)



### **Michael Tagles, PE, LEED AP BD+C**

#### ***Associate Mechanical Principal***

Michael Tagles has worked on the design of a variety of building mechanical systems for twenty-nine years, working with Hultz|BHU Engineers for the past twenty-eight of those. His designs have included heating, ventilation, air conditioning, plumbing, specialized exhaust systems, and associated engineering analyses. Michael is a LEED® Accredited Professional, and has worked on a number of projects that have received high LEED® certification status.

Michael has experience that includes working directly for a Contractor as the on-site engineer to ensure project compliance with project documents, and also as part of the Owner's A/E Team in preparing complete plans and specifications for bidding. He routinely works with the appropriate utility providers in order to improve the energy efficiency of each project.

#### **RELEVANT PROJECT EXPERIENCE**

- Tacoma Public Library | Main Branch | Mechanical Renovation
- DSHS | Fircrest School | HVAC Upgrades at 7 Cottages
- Centralia College | Library/WAH Building | Mechanical Upgrades
- Tacoma Public Library | HVAC Replacement at 3 Libraries
- Everett Community College | Olympus Hall | HVAC Replacement
- Pierce County Jail | 4th Floor | HVAC Replacement
- DSHS | Echo Glen Children's Center | Cottage HVAC Upgrades
- Capitol Campus | Office Building 2 | Controls Upgrades
- Everett Community College | Nippon Business Institute | HVAC Replacement
- City of Tacoma | Fire Station #11 | HVAC Replacement
- Shoreline Community College | Buildings 2000/4000 | HVAC Upgrades
- DSHS | Echo Glen Children's Center | Cottage HVAC Control Upgrades
- Pierce County Parks & Recreation | Sprinker Recreation Center | HVAC Upgrades
- Tacoma Community College | Buildings 7, 8, & 18 | HVAC Replacement
- Allenmore Hospital | Emergency Department | Mechanical Improvements
- City of Tacoma | Fire Station #13 | HVAC Replacement
- Pierce County | County/City Building | Mechanical Renovation
- DNR | Forks Administration Building | Mechanical System Improvements
- University of Puget Sound | Schneebeck Hall | HVAC Replacement
- USPS | Tacoma Carrier Annex | HVAC Replacement
- Capitol Campus | Emergency Operations Center | HVAC Upgrades
- Olympic College | Bremerton Campus | Mechanical Improvements
- City of Tacoma | New Police Headquarters

#### **YEARS WITH HULTZ|BHU**

28 Years

#### **EDUCATION/REGISTRATION**

B.S., Mechanical Engineering,  
University of Washington, 1994

Professional Mechanical Engineer:  
Washington 2011, Georgia 2021,  
Oregon 2023

#### **PROFESSIONAL ASSOCIATIONS**

Member, National Fire Protection  
Agency (NFPA)

Member, American Society of  
Mechanical Engineers (ASME)

Member, American Society of  
Heating, Refrigeration, and Air  
Conditioning Engineers (ASHRAE)

LEED® Accredited Design  
Professional, BD+C



### **Tiffany Roberts** *Senior Mechanical Engineer*

Tiffany Roberts has been the design engineer for numerous public safety and municipal projects; designing HVAC systems, plumbing systems, controls, boiler and chiller plants and exhaust systems. She has also been responsible for the project specifications, cost estimates, and construction.

From initial project scheduling, code compliance, heating and cooling load calculations, to plumbing and HVAC design, construction administration and final building inspections, Tiffany has worked on a wide variety of projects including schools, colleges, military facilities, office buildings, churches and retail buildings.

#### **RELEVANT PROJECT EXPERIENCE**

- Tacoma Public Library | Moore Branch | HVAC Upgrades
- WMD | Camp Murray | Building 34 | HVAC Improvements
- Thurston County | Emergency Services Center | HVAC Replacement
- Tacoma Dome & Exhibition Hall | Mechanical Renovation
- Centralia College | Administration Building | HVAC System Replacement
- WMD | Camp Murray | Building 15 | HVAC Improvements
- Northshore Parks & Recreation | Northshore Senior Center | HVAC Replacement
- Pierce County | Spanaway Sheriff Precinct | Improvements
- USPS | Pullman Post Office | HVAC Replacement
- North Thurston SD | Seven Oaks Elementary School | Controls Upgrades
- WMD | Camp Murray | Buildings 1 & 20 | HVAC Replacement
- USPS | Dayton Post Office | HVAC Replacement
- Thurston County | Building 3 - Administration | HVAC Replacement
- WMD | Camp Murray | Buildings 32 | HVAC Replacement
- DSHS | Western State Hospital | Buildings 32 & 33 | HVAC Improvements
- WSDOT | Everett Maintenance Facility
- WMD | Joint Base Lewis-McChord | Building 3106 | HVAC Upgrades
- North Thurston SD | Meadows, Horizons & Seven Oaks Elementary Schools | HVAC Improvements
- CKSD | Brownsville Elementary School | HVAC Replacement
- Centralia College | Administration Building | HVAC System Replacement
- CKSD | Olympic High School | HVAC Improvements
- CKSD | Pinecrest Elementary School | HVAC Improvements
- CKSD | Central Kitsap High School | HVAC Improvements
- NTSD | River Ridge High School | Mechanical Improvements

#### **YEARS WITH HULTZ|BHU**

19 Years

#### **EDUCATION/REGISTRATION**

B.S., Mechanical Engineering,  
University of Washington, 2002

#### **PROFESSIONAL ASSOCIATIONS**

Member, American Society of  
Heating, Refrigeration, and Air  
Conditioning Engineers (ASHRAE)





### **Tom Urquhart, PE** *Electrical Principal*

Tom Urquhart has more than forty years of experience as an electrical design and consulting engineer. His experience includes condition assessment, cost estimating, specification writing, project document preparation, design, and construction administration for small, medium, and large projects involving electrical work covered under Divisions 26, 27, and 28 of the Construction Specification Institute Manual of Practice.

After serving four years with the U.S. Air Force as an officer attached to a Civil Engineering Squadron, Tom has since been with Hultz|BHU Engineers. He has performed studies, code analysis, cost estimating, planning and design of renovations, upgrades, and new construction for electrical systems that include lighting, power distribution (above and below 600 volts), structured cabling, security, and life safety systems. Tom has been the electrical engineer of record for numerous school districts, as well as college and universities, commercial, industrial, and institutional buildings.

### **RELEVANT PROJECT EXPERIENCE**

- Centralia College | Library/WAH Building | Mechanical Upgrades
- Everett Community College | Nippon Business Institute | HVAC Replacement
- City of Yakima | Municipal Building | HVAC Improvements
- Tacoma Public Library | Moore Branch | HVAC & Lighting Upgrades
- Kitsap County Jail | HVAC Replacement
- Ocean Park Library | Addition
- DSHS | Echo Glen Children's Center | Cottage HVAC Upgrades
- Thurston County | Emergency Services Center | HVAC Replacement
- University of Puget Sound | Collins Library | Remodel
- Capitol Campus | Emergency Operations Center | HVAC Upgrades
- DSHS | Fircrest School | HVAC Upgrades at 7 Cottages
- WMD | Camp Murray | Building 34 | HVAC Improvements
- Tacoma Public Library | Main Branch | Remodel
- Lakehaven | Lakota Maintenance Building | HVAC Replacement & Re-Roof
- Tacoma SD | Mann Elementary School | Library | HVAC Improvements
- WMD | Camp Murray | Buildings 1 & 20 | HVAC Replacement
- DSHS | Yakima Valley School | HVAC Replacement & Repairs
- City of Tacoma | Fire Station #5 | Remodel
- DOC | Stafford Creek Correctional Center | Electrical Improvements
- Centralia College | Student Center | HVAC Upgrades & Re-Roof
- City of Olympia | Old City Hall/Police Station | Remodel
- WMD | Emergency Management Center | Modernization

### **YEARS WITH HULTZ|BHU**

32 Years

### **EDUCATION/REGISTRATION**

B.S., Electrical Engineering, Virginia Military Institute, 1972

Professional Electrical Engineer:  
Washington 1979, Oregon 1983,  
Colorado 1995, Arizona 1997,  
Texas 2002, North Carolina 2007,  
Florida 2015, New Mexico 2021,  
California 2021

### **PROFESSIONAL ASSOCIATIONS**

Member, National Fire Protection  
Agency (NFPA)

Member, National Society of  
Professional Engineers (NSPE)



### **Neil Morse** *Electrical Engineer*

Neil Morse has over thirty-three years of experience in the electrical construction trade as an electrical installer, contractor and designer with his past fifteen years designing with Hultz|BHU Engineers.

His experience includes planning, estimating, design, installation, supervision, and inspection for electrical systems associated with educational, healthcare, residential, commercial, instrumentation and automation. Continuing education courses in Electrical Code, Theory, Grounding and low voltage systems.

### **RELEVANT PROJECT EXPERIENCE**

- Tacoma Public Library | HVAC Replacement at 3 Libraries
- Pierce County | Spanaway Sheriff Precinct | Improvements
- WSP | Seattle Crime Lab | Electrical Improvements
- Pacific Lutheran University | Library Remodel
- WDFW | Mill Creek Office | Heat Pump Replacement
- WMD | Camp Murray | Building 34 | HVAC Improvements
- DSHS | Fircrest School | HVAC Upgrades at 7 Cottages
- USPS | Redmond Carrier Annex | HVAC Improvements
- WMD | Camp Murray | Buildings 1 & 20 | HVAC Replacement
- Lakehaven | Lakota Maintenance Building | HVAC Replacement & Re-Roof
- DSHS | Rainier School | Central Kitchen | HVAC Replacement
- Pierce County Parks & Recreation | Sprinker Recreation Center | HVAC Upgrades
- USPS | Tacoma Carrier Annex | HVAC Replacement
- WMD | Camp Murray | Buildings 32 | HVAC Replacement
- Bellevue Fire Station #2 | HVAC Improvements
- Thurston County | Emergency Services Center | HVAC Replacement
- DSHS | Rainier School | Cottage Air Conditioning Addition
- Kittitas County Jail | Expansion
- DOC | Cedar Creek Corrections Center | Electrical Improvements
- WSDOT | Tumwater Materials Lab | HVAC Access Controls
- Allenmore Hospital | Emergency Department | Electrical Improvements
- Kelso SD | Stadium | Mechanical Improvements
- Tacoma Community College | Buildings 9 & 20 | HVAC Replacement
- Centralia College | Student Center | HVAC Upgrades & Re-Roof

### **YEARS WITH HULTZ|BHU**

19 Years

### **EDUCATION/REGISTRATION**

Journeyman Electrician, Washington State, 1990

Electrical Administrator, Washington State, 2000

Master of Electrical, Washington State, 2003



**Steve Barnes, AIA**  
*Project Architect*



Steve has over thirty-five years of design and architectural management experience. He shows strong leadership and relationship building skills in each project he works on. Steve's thoroughness and focus on providing constructible designs contributes to his project's success. Steve has extensive experience working with government agencies and using innovation to maximize budgets.

### RELEVANT PROJECT EXPERIENCE

- Central Kitsap School District | Jenne Wright Administration Building | Roofing & Exterior Repairs
- Highline Public Schools | District Performing Arts Center
- Central Kitsap School District | Envelope Repairs at 11 Schools
- USPS | Bellevue Carrier Annex | Conversion & Expansion
- Highline Public Schools | Hilltop Elementary School | Modernization & Addition
- Issaquah School District | Briarwood Elementary School | Replacement
- USPS | Seattle Main Post Office
- Highline Public Schools | School District | Hazel Valley Elementary School | Replacement
- USPS | Tacoma P&DC | Improvements

### YEARS WITH CORNERSTONE

30 Years

### EDUCATION/REGISTRATION

B.Arch, Washington State University

Registered Architect: WA



**Luke Heath, SE**  
*Structural Principal*



Luke has been with PCS Structural Solutions since 2002 and has spent his career matching architectural vision with incredible creativity for structural solutions. Luke leads structural design for a variety of civic projects including 500+ RTU/Mechanical support projects throughout the region, working for owners, architects and mechanical contractors and engineers. With this valuable experience, Luke brings an open mind and options for supporting equipment.

As principal-in-charge of structural engineering, Luke will provide consistency, communication, and leadership of structural design throughout all phases of each project. He will direct the quality, budget, and schedule aspects of the structural design.

### RELEVANT PROJECT EXPERIENCE

- City of Orting | City Hall | HVAC Upgrades
- Federal Way City Hall Rooftop Mechanical Unit Replacement
- Bellarmine Preparatory School | Library | Mechanical Unit Support
- PeaceHealth Medical Center | Inpatient HVAC Upgrades
- Weyerhaeuser Campus | Center Building | RTU/Condenser Support
- Muckleshoot Indian Tribe | Muckleshoot Casino | HVAC Upgrades
- PeaceHealth Saint Joseph Medical Center | Cooling Tower Replacement
- Auburn School District | Admin Building | Mechanical Unit Support
- Kent Corporate Center | RTU Replacement
- Bethel School District | Educational Service Center | Mechanical Rooftop Support
- Central Building | HVAC Replacement

### YEARS WITH PCS

21 Years

### EDUCATION/REGISTRATION

B.S., Civil Engineering, 2001,  
Washington State University

M.S., Civil Engineering, 2002,  
Washington State University

Structural Engineer: Washington,  
Oregon

October 24, 2023

City of Everett Procurement  
2930 Wetmore Avenue  
Suite 9E  
Everett, Washington 98201

Attention: Theresa Bauccio-Teschlog, MBA, NIGP-CPP, CPPB

Subject: RFQ No. 2023-093  
HVAC and Controls Replacement

To Whom It May Concern:

We appreciate this opportunity to submit our qualifications for your review. We would like to be considered for the City of Everett's HVAC and Controls Replacement projects at the Everett Main Library, South Precinct Complex and the Everett Station.

We are a mechanical and electrical engineering firm located in Tacoma, Washington, specializing in serving County, City, State, and similar public and municipal agencies. We have over thirty years of experience in designing mechanical, plumbing, and electrical systems for government and municipal buildings and a variety of related institutional facilities.

Our firm is experienced in handling complete project design, bidding, and construction administration for projects similar to the size and scope of these three projects. We have successfully completed numerous HVAC and Control replacement projects for numerous Counties, Cities, and State agencies throughout Washington. We believe that a successful project can be carried out no matter the distance in locations, and are confident in our ability to quickly respond in person to address any project concerns or issues.

Our many years of experience makes our firm familiar with the special requirements involved in these types of projects. We understand what is expected in order to successfully and thoroughly complete these projects. Hultz|BHU Engineers provides the knowledge, skill and capacity to complete the engineering required for these three projects. They are committed to working in partnership with the City of Everett staff in order to meet all design needs and overcome any challenges to ensure your satisfaction.

We thank you for your consideration and hope we have the opportunity to work with you.

Sincerely,  
Hultz|BHU Engineers, Inc.



Rick Hultz, PE | President  
rickh@hultzbhu.com





*Western State Hospital - Building 22  
New Kitchen/Commissary*



*Western State Hospital - Building 22  
Rooftop VRF & DOAS Units*



*Nisqually Indian Tribe  
Health & Wellness Center*



*Clover Park School District  
Hudtloff Middle School*



*City of Tacoma  
Police Department Headquarters*



*City of Yelm  
New Community Center*

### AVAILABILITY

Hultz|BHU Engineers is careful and strategic in planning our project workload. We currently have few projects scheduled to take place during the time frame of these three projects.

Completing multiple projects within the same time frame requires effective project management and resource allocation. We believe that communication and organization within our firm, as well as with you, the City of Everett, is key in being able to staff various projects over a 2-3 year span. Regular monitoring and tracking of each project's progress, along with timely adjustments and risk management, are essential to keep these projects on track.

Ultimately, our firm's ability to complete multiple projects within the same time frame relies on efficient planning, coordination, and adaptability. We also understand that being involved with all stakeholders in this process is key to making each project a success.

Our proposed team members are dedicated and available immediately to accommodate the engineering needs for the City of Everett's HVAC and Control Replacement projects. We have worked on numerous similar projects in the past, and plan to use our same experienced engineers and qualified support staff on our future projects.

As a team, we have the understanding of the unique requirements and scheduling needed in order to successfully complete these projects.

### APPROACH

We know that it takes a team effort to achieve success, and having the right team with the right project approach really matters. Our project approach will be to establish a detail work breakdown structure and implement Project Controls to meet the goal of the project. This project is unique because the system improvements and repairs must be performed with minimum impact to occupant usage and facility operations.

#### 1. SCHEDULE, BUDGET, AND SEQUENCING APPROACH AND IMPACTS:

We will work collaboratively with the City of Everett to develop the scheduling methodology, scheduling tools, and how to integrate with all three projects. Regular updates and adjustments to cost estimates and scheduling are necessary as the project progresses and new information becomes available. Effective cost estimation and forecasting enables our firm to allocate resources appropriately, make informed decisions, and ensure the financial viability of construction projects. The ability to estimate and forecast construction costs is crucial for effective project planning and budgeting. It involves analyzing various factors such as project scope, materials, labor, equipment, permits, and potential risks.

We will develop detailed schedules, including a detailed list activities, activity durations, define dependencies, and identify the critical path (and near critical paths). The schedule will include all deliverables, and dates for all project tasks. Monthly schedule reports would be submitted to the City of Everett staff, which will summarize work accomplished, work planned, actual expenditures, and planned expenditures. Weekly design team meetings would review design work progress of each consultant, discuss schedule, impacts, and resolve design and schedule issues.

If during the design, any of the schedules “slip”, we will propose strategies to get the projects back on schedule. Strategies would include expediting upcoming work, reviewing methods to reduce time for various activities (accelerate the design), change items that were in series to parallel, remove a specific work item that is severely impacting the overall project schedule.

#### 2. DESIGN APPROACH AND IMPACTS:

Some of the key items we see to making a project successful include:

- Proper project management and scheduling is a key part of a project. We have experience with managing similar projects as the three described in the scope of work.
- A concept/kick-off meeting is important as it will identify (and allow discussion for) project goals, concepts for the alternatives analysis, design criteria, budget, project management techniques/tools, schedule, and allow for an interaction and forming of a cooperative team. This meeting would also be used to begin discussions on facility operations and concerns.
- A field assessment of the existing conditions and a review of as-built documentation is another important activity. This will allow us to form concepts on how these systems can remain operational while new systems are installed.
- Analyzing alternatives will be an important activity to confirm the design direction and if other options present any advantages. We have performed numerous life cycle cost analysis (LCCA) and are experienced in evaluating the associated first costs, maintenance cost, replacement costs, energy costs, and discount factors for municipal projects.
- Since the decisions reached on all three of these projects will be long lasting, we will be reviewing green building concepts as part of our LCCA work, and on-going throughout each project.
- Project controls will be utilized to keep the projects in scope, budget and on schedule. To ensure the design meets your requirements, a design quality control manager will be assigned and a Design Quality Control (DQC) plan shall be developed. The plan will require an independent technical review (ITR) of each category of the scope of work. The ITR staff will perform a detail examination of plans, specifications and cost estimates. The ITR will recommend improvements to the design to ensure the scope of work is being met in a manner that can be bid and constructed. The DQC will then ensure back checks are implemented to insure the ITR comments are addressed. ITR will be included in the schedule.

#### 3. GC/CM DELIVERY:

We have worked on numerous projects in a GC/CM arrangement. Our success has been working closely with the GC/CM and the project sub-contractors to review the project scope, schedule, costs, and related key elements. Communication with them throughout is critical. The GC/CM process will allow for a smooth integrated project and has our full support.





*NTSD - New Salish Middle School  
Mezzanine AHU's*



*Capitol Campus  
John L. O'Brien Building*



*Tacoma Dome & Exhibition Center  
Mechanical & Electrical Renovation*



*NTSD - North Thurston High School  
Modernization*



*NTSD - New Salish Middle School  
Mechanical Room*

#### 4. IDENTIFYING POTENTIAL CONFLICTS & DISRUPTIONS TO THE AFFECTED FACILITY OPERATIONS:

We understand that the Everett Main Library, South Precinct and Everett Station facilities are occupied, and operations cannot be interrupted. There may need to be “work-around solutions” in place to keep these facilities functional. Disruptions which could occur due to project work on equipment or facilities must be prevented or mitigated.

There are a number of ways that we will handle these concerns:

- Prepare and review project schedules, weekly schedules, and daily work tasks with Contractor and staff to fully understand work being accomplished and possible impacts.
- Prepare a design that allows the existing systems to remain in place (i.e. operational) while new are installed parallel to existing (to the greatest extent possible).
- Have pre-construction, weekly, and (as needed) daily meetings with the Contractor and staff to confirm work scope and potential impacts to the facilities.
- Review “what-if” scenarios with work-around solutions in place to resolve issues.
- Coordinate with City of Everett staff for communication to facility workers so there is an awareness of the project, potential interruptions, how to communicate when they occur and the plans in place to resolve
- Confirm with Contractor that all materials are on hand for critical equipment and critical installation periodically.

#### 5. PERMITS, REGULATORY COMPLIANCE & PROJECT CHALLENGES:

We are experienced in working in all of the jurisdictions involved in these types of projects and are familiar with their code, and submittal procedures. We will establish as part of our design reports the governing codes and standards and review those with City of Everett staff. We also propose to have pre-submittal meetings with local jurisdictions to confirm an understanding of the project scope and verify their concerns will be handled.

We feel that the largest challenge to the project is working in an occupied facility, and one that cannot have operations disrupted. We have a long list of experience in working such projects in essential facilities which has included State prisons, county jails, hospitals, and 911 emergency centers. Other projects have included transit facilities, office buildings, maintenance shops, and schools. We think an essential element in handling these is having very explicit phasing plans that clearly indicate how new work is phased in and old is phased out. We think that for a number of the systems they can be installed while the existing systems are left in place. Allowing for the new system to be installed and operational prior to the existing system being demolished.



### APPROACH TO PROJECT LABOR AGREEMENTS (PLAs) & COMMUNITY WORKFORCE AGREEMENTS (CWAs)

We think PLAs and CWAs can be beneficial. We would propose to review with you a full list of the pros and cons and jointly decide on the best approach.

Some initial thoughts:

#### **PLAs:**

Can offer predictability to the labor force by reducing the likelihood of a strike or other labor dispute that could disrupt the project. They can also help manage costs by establishing predetermined labor costs to give more certainty about labor expenses and prevent cost overruns. The PLAs could also include the requirement to use highly skilled and trained workers, which can contribute to the overall quality of the project

#### **CWAs:**

These can have provisions that prioritize hiring local workers from the community and ensuring diversity within the labor force which can contribute to the economic health of the community. CWAs can also require local educational programs or other social aspects which can aid in developing good relationships with the community.

Overall, PLAs and CWAs can bring about economic, social, and community benefits. As a team, we will consider the unique characteristics of each of these projects and the perspectives of all stakeholders involved.





## SEATTLE PUBLIC SCHOOLS LAFAYETTE ELEMENTARY SCHOOL | HVAC UPGRADES

**Company Name:** Seattle Public Schools

**Address:** 2645 California Avenue SW, Seattle, Washington 98116

**Point of Contact:** Tom Gut, Senior Project Manager  
twgut@seattleschools.org, 206.252.0709

**Start Date:** 2019

**Completion Date:** 2021

**Contract Value:** \$200,000

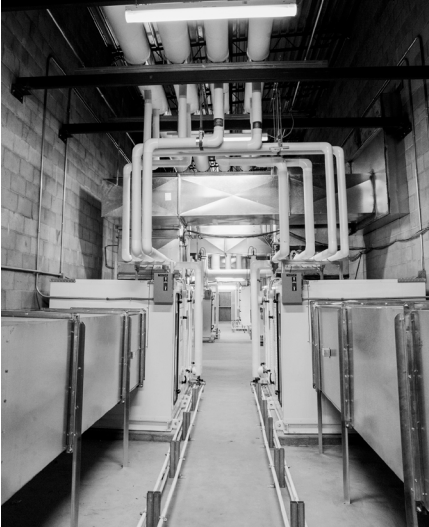
**Construction Value:** \$3.5 million

**Description:** The Lafayette Elementary School improvements included the installation of a complete new HVAC system. This new system incorporated stand-alone air handlers in each classroom with MERV 13 filters, CO2 controls, optimum start/stop, and full fresh air economizer ability.

Each classroom has its own dedicated air handling system using variable speed high quality fan coil units. The building's indoor air quality can be maintained without re-circulating air between spaces.

New central high-efficiency boilers were installed, as well as new hot water piping, new pumps, and new direct digital controls (DDC). New fire sprinkler systems and seismic improvements were also part of this project.

The work also included an evaluation for the new HVAC ventilation system with the current pandemic in mind, including improved filtration and increased ventilation rates.



## PIERCE COUNTY | 950 FAWCETT BUILDING | HVAC REPLACEMENT

**Company Name:** Pierce County

**Address:** 950 Fawcett Avenue, Tacoma, Washington 98402

**Point of Contact:** Tim Chan, Construction Project Manager  
tchan@co.pierce.wa.us, 253.798.6702

**Start Date:** 2018

**Completion Date:** 2019

**Contract Value:** \$185,000

**Construction Value:** \$1.65 million

**Description:** Project involved a complete new HVAC system for this three-story office building in downtown Tacoma, Washington. The building was occupied during the project with construction phased through each floor of the building.

The new mechanical system uses a high efficiency VRF (variable refrigerant flow) system with a DOAS (dedicated outside air system) with energy recovery for fresh air. Project included added rooftop steel supporting structure to accommodate new rooftop air cooled condensers and the DOAS air handler.

Hultz/BHU Engineers was prime on the project, handling all contract document preparation, bidding document distribution, responsibility criteria review, and construction phase administration.





### KOMACHIN MIDDLE SCHOOL | RENOVATION

**Company Name:** North Thurston Public Schools

**Address:** 3650 College Street SE, Lacey, Washington 98503

**Point of Contact:** Tony Matiatos, Assistant Director, Construction & Design  
amatiatos@nthurston.k12.wa.us, 360.412.4500

**Start Date:** 2020

**Completion Date:** 2023

**Contract Value:** \$453,000

**Construction Value:** \$29 million

**Description:** Remodel of a 110,000 square foot middle school with installation of a complete new HVAC system and DDC controls. The middle school has been occupied during construction, with phased construction over two years. New systems include multiple fan coil units, central boiler, central chiller, energy recovery DOAS units, and open protocol DDC controls.

### KITSAP COUNTY JAIL | HVAC REPLACEMENT

**Company Name:** Kitsap County

**Address:** 614 Division Street, Port Orchard, Washington 98366

**Point of Contact:** Glen McNeill, Project Manager  
gsmcneill@kitsap.gov, 360.337.4789

**Start Date:** 2022

**Completion Date:** 2024

**Contract Value:** \$500,000

**Construction Value:** \$7.5 million

**Description:** Replacement of the complete HVAC system and controls for this multi-story jail in Port Orchard. New equipment includes heat recovery units, multizone units, VRF system, engineered smoke control system and new DDC controls.

Project is phased to allow for full occupancy during construction.



### OLYMPUS HALL | HVAC REPLACEMENT

**Company Name:** Everett Community College

**Address:** 801 Wetmore Avenue, Everett, Washington 98020

**Point of Contact:** Jonathan Martin, DES Project Manager  
jonathan.martin@des.wa.gov, 360.239.3350

**Start Date:** 2015

**Completion Date:** 2016


**Contract Value:** \$160,000

**Construction Value:** \$1.25 million

**Description:** Hultz/BHU provided the engineering for the HVAC system and equipment upgrades, as well as the improvements to the electrical and fire alarm system. The mechanical work included new gas fired high-efficiency boilers, new rooftop air handling units, replacement of the existing ceiling, new ductwork, and new DDC controls. Our in-house electrical team provided the necessary connections required to accommodate the new system.

**City of Everett**  
**REQUEST FOR QUALIFICATIONS #2023-093**  
**EVERETT MAIN LIBRARY HVAC and CONTROLS REPLACEMENT**  
**SOUTH PRECINCT CONTROLS REPLACEMENT and MAINTENANCE**  
**EVERETT STATION CONTROLS REPLACEMENT and MAINTENANCE**

The undersigned hereby declares that he or she is duly authorized to complete and submit this Statement of Qualifications and that the statements contained herein are true and correct as of the date set forth below. Incomplete, incorrect or misleading information may be reason for a determination of non-responsibility by the City of Everett.

Company Name: Hultz/BHU Engineers, Inc.		
Company Address: 1111 Fawcett Avenue, Suite 100		
City: Tacoma	State: Washington	ZIP: 98402
Tax ID #: 91-1282644	UBI #: 601 589 566	
Legal status of supplier organization, i.e., corporation, partnership, sole proprietorship. Corporation		
Diversity Certification (if applicable): <input type="checkbox"/> Disadvantaged Business Enterprise (DBE) <input type="checkbox"/> Minority Business Enterprise (MBE) <input type="checkbox"/> Women Business Enterprise (WBE) <input type="checkbox"/> Minority Women Business Enterprise (MWBE) Certification number: N/A		
Website: www.hultzbhu.com	City of Everett Business License # 66610	
Supplier Contact Name (if different from Authorizing Official):	Supplier Contact Title:	
Supplier Contact Email:	Supplier Contact Direct Phone:	
Supplier Contact Address (if different from above):		
City:	State:	ZIP:
Authorizing Official Name: Rick Hultz	Authorizing Official Title: President	
Authorizing Official Email: rickh@hultzbhu.com	Authorizing Official Phone: 253.383.3257	
Authorizing Official Signature* and Date:  October 24, 2023		
*A signature means an original signature, a copy of an original signature, a PDF scan of an original signature, or a DocuSign/AdobeSign electronic signature.		



City of Everett

# Federal Transit Administration Clauses

Last updated: 1/13/2023



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## **1. SIMPLIFIED ACQUISITION THRESHOLD**

Required Clauses in Third Party Contracts. In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third-party contracts made by the Recipient under the Federal award must contain provisions covering the following.

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327.) The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

## **2. ACCESS TO RECORDS AND REPORTS**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

The U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all third party contract records (at any tier) as required under 49 U.S.C. § 5325(g); and (2) Sufficient access to all third party contract records (at any tier) as needed for compliance with applicable federal laws, regulations, and requirements or to assure proper management of Underlying Agreement as determined by FTA.

- A. **Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- B. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- D. **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors’ access to the sites of performance under this contract as reasonably may be required.

## **3. BONDING REQUIREMENTS - NOT APPLICABLE**

***Bonds are required for all construction or facility improvement contracts and subcontracts exceeding***

*the simplified acquisition threshold.*

#### **4. BUS TESTING - NOT APPLICABLE**

#### **5. BUY AMERICA REQUIREMENTS**

*This clause flows down and extends to all first-tier contractors and their contracts. It must be included in every first-tier contract.*

The contractor agrees to comply with 49 U.S.C 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

#### **6. BUILD AMERICA, BUY AMERICA ACT**

*This clause flows down and extends to all first-tier contractors and their contracts. It must be included in every first-tier contract.*

The contractor agrees to comply with the Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

- A. All iron and steel used in the project are produced in the United States – this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- B. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- C. All construction materials\* are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

\*Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the

infrastructure project.

## **7. CARGO PREFERENCE REQUIREMENTS – NOT APPLICABLE**

### **A. Cargo Preference - Use of United States-Flag Vessels**

Include for all contracts in which ocean vessel is used to transport.

## **8. CHARTER SERVICE – NOT APPLICABLE**

## **9. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (Over 150K)**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

The Contractor agrees:

1. It will not use any violating facilities;
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
3. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1388).
4. It will report violations must to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

## **10. CIVIL RIGHTS AND EQUAL OPPORTUNITY**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

The City of Everett is an Equal Opportunity Employer. As such, the City of Everett and all third-party contractors and their contracts agree to prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City of Everett agrees to comply with the requirements of 49 U.S.C. § 5323(h)(3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

City of Everett and all third-party contractors and their contracts also agree to comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; (ii) Comply with Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; (iii) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; (iv) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; (v) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements

and Guidelines for Federal Transit Administration Recipients;” and (vi) Follow other federal guidelines pertaining to EEO laws, regulations, and requirements.

The City of Everett also follows the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance, U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and all other applicable federal guidance.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex, including gender identity.** The Contractor will prohibit discrimination based on race, color, or national origin in accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000d. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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 Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5. **Affirmative Action.** If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), take affirmative action that includes, but is not limited to: (A) Recruitment advertising, recruitment, and employment; 53 (B) Rates of pay and other forms of compensation; (C) Selection for training, including apprenticeship, and upgrading; and (D) Transfers, demotions, layoffs, and terminations.
6. **Equal Employment Opportunity Requirements for Construction Activities.** Comply, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), with: (i) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60; and (ii) Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

## **11. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### **A. Background and Applicability**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract. It is the prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subcontractors.*

### **B. Disadvantaged Business Enterprise (DBE) Participation**

The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 applies to this contract. The requirements of this contract are to encourage DBE participation and to report race neutral accomplishments semi-annually. No preference will be included in the evaluation of bids, no minimum level of DBE participation shall be required as condition for receiving an award and bids/Bids will not be rejected or considered non-responsive on that basis.

### **C. Disadvantaged Business Enterprises (DBE) Definitions**

1. DBE is an incorporated or unincorporated small business concern or joint venture, as defined by Section 3 of the Small Business Act and implementing regulations, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$14 million over the previous three fiscal years. The Secretary shall adjust this figure from time to time for inflation. A DBE must be certified by the Washington State Office of Minority and Women's Business Enterprises.
  - a. At least 51 percent of which is owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and,
  - b. The management and daily business operations of which are controlled by the socially and economically disadvantaged individuals who own the business.
2. Socially and Economically Disadvantaged Individuals are those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:

- a. Black Americans - which includes persons having origins in any of the black racial groups of Africa;
- b. Hispanic Americans - which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
- c. Native Americans - which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
- d. Asian-Pacific Americans - which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories or the Pacific and the Northern Marianas;
- e. Asian-Indian Americans - which includes persons whose origins are from India, Pakistan and Bangladesh;
- f. Women - regardless of race, ethnicity or origin; and,
- g. Other - individuals found to be socially and economically disadvantaged by the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.

**D. Disadvantaged Business Enterprises**

- 1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of DBEs is 10%. The agency's overall goal for DBE participation is 2%. A separate contract goal has not been established for this procurement.
- 2. The successful bidder/Bidder will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- 3. The contractor must promptly notify the City of Everett, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City of Everett.

**E. Affirmative Efforts to Solicit DBE Participation**

DBE firms shall have equal opportunity to compete for and perform subcontracts which the Contractor enters into pursuant to this contract. Contractors are encouraged to:

- 1. Advertise opportunities for subcontractors or suppliers in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g. newspapers, journals, etc.) or by soliciting bids/Bids directly from DBEs.
- 2. Utilize the services of available minority community-based organizations, minority contractor



groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses, such as the Office of Minority and Women's Business Enterprises listed below.

3. Establish delivery schedules, where requirements of the contract allow, that encourage participation by DBEs and other small businesses.
4. Achieve attainment through joint ventures.

In the absence of a mandatory goal, all DBE participation that is attained on this project will be considered as "race neutral" participation and will be reported as such.

**F. Information Regarding DBEs**

Information regarding Disadvantaged Business Enterprises currently certified with the State of Washington is available at:

Office of Minority and Women's Business Enterprises

PO Box 41160

Olympia, WA 98504-1160

(800) 208-1064 Toll Free

(360) 586-7079 Fax

Or visit their website at <http://www.omwbe.wa.gov/>

**G. Procedures Between Award and Execution**

After award of the contract, the successful bidder shall provide the following additional information:

A list of all firms who submitted a bid or quote in an attempt to participate in this project whether they were successful or not. Include the correct business name, federal employer identification number (optional), and a mailing address.

**H. Required DBE Contract Clauses**

**1. Contract Assurance**

*The following clause is incorporated in every FTA-assisted contract and subcontract:*

The Contractor 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 FTA-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 such other remedy as City of Everett deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;

- c. Liquidated damages; and/or
- d. Disqualifying the Contractor from future bidding as non-responsible per 49 CFR§ 26.13(b).

**2. Prompt Payment and Retainage**

*The following clause is incorporated in every FTA-assisted prime contract:*

When payment is received by a Contractor or Subcontractor for work performed, the Contractor or Subcontractor shall pay to any Subcontractor no later than thirty (30) days after the receipt of the payment, amounts allowed the Contractor on account of the work performed by the Subcontractor, to the extent of each Subcontractor's interest therein, unless the payment otherwise is excused under the provisions of RCW 39.04.250. This requirement shall flow down from Contractor to all lower tier subcontractors.

The City of Everett will not withhold any retainage or payments owing to the Contractor. The Contractor shall not withhold any retainage or payments owing to any Subcontractor. No delays or postponements of payment from the above referenced timeframe may occur unless approved in writing by the City. This clause applies to the DBE and non-DBE subcontracts.

If an DBE has not been paid on time, it should seek to resolve issues with the Contractor or Subcontractor, if the DBE is on a lower tier. If a satisfactory resolution is not arrived at, the DBE may approach the City of Everett Procurement Manager for assistance.

**3. Resolving Payment Disputes, Discrepancies and Delays**

Per 49 CFR §26.29 Contractors shall include in their subcontracts language providing that Contractor and Subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.

Further, if a payment to a Contractor by the City of Everett is in dispute, has discrepancies or is delayed for any other reason, Contractor shall pay its DBE subcontractor(s) in a timely manner, without waiting for receipt of payment from the City of Everett.

**4. Use of DBE Financial Institutions:**

Per 49 CFR Part 26.27, Contractors and Subcontractors are encouraged to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in their community and make reasonable efforts to use these institutions. The list of such firms is available at: [www.federalreserve.gov/releases/mob](http://www.federalreserve.gov/releases/mob).

**I. Small Business Participation**

Bidders on public works contracts greater than \$100,000 must identify and provide specific subcontracts appropriate for small business participation.

Definition of Small Business per the Code of Federal Regulations (CFR), Title 49: Transportation, Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, Subpart A – General, Paragraph 26.5:

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and

Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipt specified in Paragraph 26.65(b).

Paragraph 26.65: What rules govern business size determinations?

1. To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.
2. Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.
3. The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

[74 FR 15224, Apr. 3, 2009]

## **12. VETERAN'S EMPLOYMENT**

To the extent practicable, Contractors shall give a hiring preference to veterans (as defined in Section 2108 of title 5 (5 USC 2108)) who have the requisite skills and abilities to perform the construction work required under a third-party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## **13. TERMINATION OF DBE SUBCONTRACTOR**

The Contractor shall not terminate the DBE subcontractor(s) listed in the **bid documents** without the City of Everett's prior written consent. The City of Everett may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five (5) days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the City of Everett in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated.

### **A. Continued Compliance**

The City of Everett shall monitor the Contractor's DBE compliance during the life of the Contract. In

the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the City of Everett that** summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the City of Everett. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder shall permit:

- The City of Everett to have access to necessary records to examine information as it deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the City of Everett, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in the solicitation.

**B. Sanctions for Violations**

If at any time the City of Everett has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the City of Everett may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

**14. PREVAILING WAGE AND ANTI-KICKBACK – NOT APPLICABLE**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included*

*in every tier contract.*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Davis-Bacon Act, (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

## **15. CONTRACT WORK HOURS AND SAFETY STANDARDS (40 U.S.C. §§ 3701 – 3708)**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of forty (40)

hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the 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 this clause in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA 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 moneys 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 this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section 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 this agreement.

## **16. CONTRACT WORK HOURS AND SAFETY STANDARDS FOR AWARDS NOT INVOLVING CONSTRUCTION**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) 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.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

## **17. ENERGY CONSERVATION**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

The contractor agrees to comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 CFR Part 622, subpart C.

## **18. FLY AMERICA**

*This clause flows down and extends to the first-tier contractor only.*

A. **Definitions.** As used in this clause:

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **B. Statement of Unavailability of U.S.-Flag Air Carriers**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

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(End of statement)

The Contractor shall include the substance of this clause, including this paragraph, in each subcontract or purchase under this contract that may involve international air transportation.

## **19. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

*This clause applies to any tier contract that is expected to exceed \$25,000. The Contractor, including any of its officers or holders of a controlling interest, is obligated to inform the Recipient, the City of Everett, whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should the Contractor be included on such a list during the performance of this project, it shall so inform the Recipient.*

(Executive Orders 12549 and 12689). A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: (i) Complies with federal debarment and suspension requirements; and (ii) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.

The Contractor shall comply and facilitate compliance with U.S. DOT regulations requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200. "Nonprocurement Suspension and Debarment," which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- A. Debarred from participation in any federally assisted Award;
- B. Suspended from participation in any federally assisted Award;
- C. Proposed for debarment from participation in any federally assisted Award;
- D. Declared ineligible to participate in any federally assisted Award;
- E. Voluntarily excluded from participation in any federally assisted Award; or
- F. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City of Everett. If it is later determined by the City that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Everett, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2



C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **20. DISCLOSURE OF LOBBYING ACTIVITIES (31 U.S.C. § 1352)**

*The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant.*

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors 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 an 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 must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

## **21. NO FEDERAL GOVERNMENT OBLIGATION OR LIABILITY**

*This clause applies to third party contracts that are federally funded and flows down to every tier.*

- A. The Federal Government does not and shall not have any commitment or liability related to this Contract or its underlying agreements, to any participant at any tier, or to any other person or entity that is not a party (FTA or the Agency) to the underlying agreement; and
- B. Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Contract at any tier that may affect any underlying agreement, the Federal Government does not and shall not have any commitment or liability to any participant or other entity or person that is not a party (FTA or the Agency) to this Contract/Task Order or any underlying agreement.

## **22. PATENT RIGHTS AND RIGHTS IN DATA**

*If the recipient or subrecipient wishes to enter into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award.*

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the City of Everett intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: 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 FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings, and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

- A. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
  - 1. Any subject data developed under the Contract, whether or not a copyright has been obtained; and any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- B. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- C. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless 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 that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- D. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- E. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
- F. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.
- G. **Rights to Inventions Made Under a Contract or Agreement.** If the federal award meets the

definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**23. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES – NOT APPLICABLE**

**24. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The Program Fraud clauses apply to all third-party contracts that are federally funded. It extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 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. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, 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 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor 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 subcontractor who will be subject to the provisions.

**25. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**

*This clause applies to all third-party contractor and their contracts at every tier.*

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- A. **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- B. **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
- C. **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

## **26. RECOVERED MATERIALS - RECYCLED PRODUCTS**

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

## **27. SAFE OPERATION OF MOTOR VEHICLES**

*The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. It flows down to all third-party contractors at every tier.*

### **A. Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the City of Everett.

### **B. Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

## **28. SCHOOL BUS OPERATIONS – NOT APPLICABLE**

## **29. SEISMIC SAFETY**

*The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings. This clause flows down from FTA recipients and subrecipients to first tier contractors to assure compliance with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.*

The contractor 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 (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor 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.

## **30. SUBSTANCE ABUSE REQUIREMENTS – NOT APPLICABLE**

## **31. TERMINATION**

*All contracts in excess of \$10,000 must address the termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement. This clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.*

### **A. Termination for Convenience or Default (Architect and Engineering)**

The City of Everett may terminate this contract in whole or in part, for the City's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the City's Procurement Professional all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. The City of Everett has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the City, the City's Procurement Professional shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the City may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the City.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

### **B. Opportunity to Cure (General Provision)**

The City, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor two weeks in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) business days after receipt by Contractor of written notice from the City setting forth the nature of said breach or default, the City of Everett shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**C. Waiver of Remedies for any Breach**

In the event that the City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

**32. VIOLATION AND BREACH OF CONTRACT**

*All contracts in excess of the Simplified Acquisition Threshold (currently set at \$250,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. The Violations and Breach of Contracts clause flow down to all third-party contractors and their contracts at every tier.*

**A. Rights and Remedies of the City of Everett**

The City of Everett shall have the following rights in the event that the City of Everett deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

**B. Rights and Remedies of Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the City of Everett, the Contractor expressly agrees that no default, act or omission of the City of Everett shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract, unless the City directs Contractor to do so, or to suspend or abandon performance.

**C. Remedies**

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the City of Everett will have all remedies in law and equity, including the right to specific performance, without further

assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the City takes action contemplated herein, the City will provide the Contractor with sixty (60) days written notice that the City considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

**D. Disputes**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of City's Project Manager. This decision shall be final and conclusive unless within ten (10) business days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City Clerk. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Procurement Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

**E. Performance during Dispute**

Unless otherwise directed by the City of Everett, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**F. Claims for Damages**

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or any of its employees, agents or others for whose acts it is legally liable, a claim for damages, therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**G. Remedies**

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Everett and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within in Washington State in which the City of Everett is located.

**H. Rights and Remedies**

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Everett or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**33. PROTEST AND APPEALS**

Procurement Protest Procedures are available for review at:

<https://www.codepublishing.com/WA/Everett/#!/Everett03/Everett0346.html#3.46>

**34. FEDERAL CHANGES**

Any proposed change in this contract shall be submitted to the City of Everett for its prior approval. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (28) dated February 9, 2021) between Purchaser and FTA , or as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **35. INCORPORATION OF FTA TERMS**

The preceding and following provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F dated November 1, 2008, (Revised: July 29, 2009) are hereby incorporated by reference.

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf>

Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict either other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Everett requests which would cause City of Everett to be in violation of the FTA terms and conditions.

The contract agreement shall be binding upon and inure to the benefit of the contract parties, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.

### **36. TERMS OF THESE PROVISIONS AND COMPLIANCE**

- A. The Contractor must comply with all applicable federal laws, regulations, and requirements, and should follow applicable federal guidance, except as FTA determines otherwise in writing.
- B. To assure compliance with federal laws, regulations, and requirements, the Contractor must take measures to assure that other participants in all of its underlying agreements, including, but not limited to subcontracts or purchase or task orders with lower tier subcontractors, suppliers, consultants etc.) comply with applicable federal laws, regulations, and requirements, and follow applicable federal guidance, except as FTA determines otherwise in writing.
- C. FTA may take enforcement action if the Contractor violates an applicable federal law, regulation, or requirement, or does not follow applicable federal guidance.
- D. Parties agree that not every provision of this section will apply to every subcontractor or any underlying agreements. Criteria determining which federal laws, regulations, requirements, and guidance apply include the type of award, the federal law authorizing federal assistance for the award, the federal law, regulations, or requirements governing how the award must be implemented, the federal guidance pertaining to the award, and the Contractor's legal status as a business, a "private nonprofit entity," a "private for-profit entity," or an individual.
- E. As provided in federal laws, regulations, requirements, and guidance, FTA will enforce only those federal laws, regulations, requirements, and guidance that apply to the Contractor, or to any Project



and related activities encompassed in the award, any accompanying underlying agreements, and any amendments thereto.

- F. This Section does not have an expiration date. Section shall continue to apply to the Agency, the Contractor and all parties covered by any underlying agreements, until the Section is modified or superseded by a more recently enacted or issued applicable federal law, regulation, requirement, or guidance, or amendment.
- G. The Contractor must comply with U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200, which applies to this Contract or other underlying agreements.
- H. Except as FTA determines otherwise in writing, U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 1201, and subparts A through E of U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200, shall apply to the Contractor and all its subcontractors.

### **37. CONTRACTOR'S RESPONSIBILITY TO EXTEND FEDERAL REQUIREMENTS TO LOWER TIER PARTICIPANTS**

In certain circumstances, the Contractor's compliance with specific federal requirements depends on compliance by its lower tier participant(s) and therefore:

- A. **General.** The Contractor agrees to ensure that its lower tier participant(s) will comply with applicable federal requirements and follow applicable federal guidance.
- B. **Performance of the Contractor's Responsibilities.** If a lower tier participant is expected to fulfill any responsibilities typically performed by the Contractor, the Contractor agrees to ensure that the lower tier participant will carry out the Contractor's responsibilities in compliance with federal requirements, and provide enough information to each lower tier participant so that they understands that they will be expected to follow federal guidance.
- C. **Risk.** As provided in 2 CFR Part 1201, which incorporates by reference 2 CFR Part 200, the Contractor agrees to evaluate the risk involved before awarding an underlying agreement to any entity.
- D. **Lower tier agreements.** To comply with federal requirements, the Contractor agrees to enter into a written agreement with each lower tier participant in its underlying agreement and must include all appropriate provisions stating the lower tier participant's responsibilities to assure the Contractor's capability to comply with applicable federal requirements and guidance and specifying the responsibilities that the lower tier participant will fulfill on the Contractor's behalf.
- E. **Notice to lower tier participants.** The Contractor agrees to include notice in each lower tier agreement that:
  - 1. Federal requirements that apply to the Contractor or are included in the Contract/Task Order, the accompanying underlying agreement, and any amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in this

Contract/Task Order or the Contractors underlying agreements including any information incorporated by reference and made part of that underlying agreement; and

Applicable changes to those federal requirements will apply to this Contract/Task Order and the Contractor's underlying agreements and parties thereto at any tier.

### **38. TRAFFICKING OF PERSONS**

- A. Contractor agrees to comply and assures the compliance of each Lower Tier Participant with: Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); and the terms of this section, which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, per U.S. OMB's direction.
- B. Contractor further agrees that it and its employees that participate in this Contract/Task Order shall not:
  - 1. Engage in severe forms of trafficking in persons during the contract period, including all extensions or while Contract/Task Order is in effect,
  - 2. Procure a commercial sex act during the Contract or Task Order period, including all extensions, or
  - 3. Use forced labor in the performance of Contract or Task Order or any sub agreements thereunder.

### **39. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

This flows down to all third-party participants regardless of tier or value of the sub agreement.

Transactions Prohibited:

- A. The Contractor agrees to certify that, prior to entering into this Contract or any Lower Tier Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Contractor will obtain from the prospective Lower Tier Participant a certification that the Lower Tier Participant —
  - 1. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
  - 2. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.



**Signature of Contractor's Authorized Official**

Rick Hultz, President

**Name and title of Contractor's Authorized Official**

October 24, 2023

**Date**

- B. Contractors that cannot certify to the provisions as listed in this Section 38 above will be deemed not responsible due to the delay such non-certification would cause to the delivery of the Contract.

#### **40. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 512(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

#### **41. NOTIFICATION OF LEGAL MATTERS**

Each Third-Party Participant must include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- C. Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.
- D. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all

liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.

- E. Enforcement. The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

Contractor agrees to notify the City of Everett immediately if it becomes involved in a current or prospective legal matter that may affect the federal government, which includes, but is not limited to, FTA's interests in the award, the accompanying underlying agreement, and any Amendments thereto, or the FTA's administration or enforcement of federal laws, regulations, and requirements. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or where the FTA may be named as a party to litigation or a legal disagreement in any forum for any reason.

Contractor will immediately notify the City of Everett if it has knowledge of potential fraud, waste, or abuse occurring in relation to this Contract. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the City of Everett.

The City of Everett reserves the right to seek all remedies available to it under law, including to procure substitute services or products elsewhere and recover its damages, attorneys' fees and costs from Contractor.

## **42. SOLID WASTES**

*Required Clause in Third-Party Contracts. In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third-party contracts made by the Recipient under the Federal award must contain provisions covering the following:*

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **43. ENVIRONMENTAL PROTECTION**

- A. General. The Recipient agrees to, and assures that its Third-Party Participants will, comply with all applicable environmental and resource use laws, regulations, and requirements, and follow

applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

- B. National Environmental Policy Act. An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Recipient agrees to, and assures that its Third-Party Participants will:
1. Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to:
    - a. Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139;
    - b. The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 CFR Part 1500 – 1508;
    - c. Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622;
    - d. Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note (35 Fed. Reg. 4247); and
    - e. Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
  2. Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation:
    - a. Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013;
    - b. Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and
    - c. Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
- C. Environmental Justice. The Recipient agrees to, and assures that its Third-Party Participants will, promote environmental justice by following:
1. Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, (59 Fed. Reg. 7629, 3 C.F.R. 1994 Comp., p. 859) as well as facilitating compliance with that Executive Order;
  2. U.S. DOT Order 5610.2(a), "Department of Transportation Updated Environmental Justice Order," 77 Fed. Reg. 27534, May 10, 2012; and
  3. The most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

- D. Other Environmental Federal Laws. The Recipient agrees to comply or facilitate compliance, and assures that its Third Party Participants will comply or facilitate compliance, with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order No. 11988, as amended, "Floodplain Management."
- E. Corridor Preservation. The Recipient agrees that:
  - 1. It will not develop any right-of-way acquired under 49 U.S.C. § 5323(q) in anticipation of implementing its Award until all required environmental reviews for each Project or related activities have been completed; and
  - 2. It will follow FTA Final Guidance on the Application of 49 U.S.C § 5323(q) to Corridor Preservation for a Transit Project, October 27, 2014.
- F. Use of Certain Public Lands. The Recipient agrees to comply, and assures that its Third Party Participants will comply, with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 CFR Part 774, and referenced in 49 CFR Part 622.
- G. Historic Preservation. The Recipient agrees to, and assures that its Third-Party Participants will:
  - 1. Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places.
  - 2. Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108.
  - 3. Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501, et seq.
  - 4. Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 CFR Part 800.
  - 5. Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
- H. Indian Sacred Sites. The Recipient agrees to, and assures that its Third Party Participants will, facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note (61 Fed. Reg. 26771).
- I. Mitigation of Adverse Environmental Effects.

1. The Recipient agrees to comply with all environmental mitigation measures that may be identified as conditions that the Federal Government might impose in its finding of no significant impact or record of decision or commitments in the environmental documents that apply to the Award, such as environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. § 303, and other environmental documents.
2. The Recipient agrees that:
  - a. Any mitigation measures agreed on will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto;
  - b. Any deferred mitigation measures will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto as soon as agreement with the Federal Government is reached; and
- J. Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the Federal Government.

#### **44. FEDERAL “\$1 COIN” REQUIREMENTS**

The City of Everett agrees to comply with section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), therefore its equipment and facilities will be fully capable of accepting and dispensing \$1 coins when coins or currency are required to use that equipment or those facilities, and it will display signs and notices of the \$1 coin capability of its equipment and facilities on its premises, including vending machines, where coins or currency are used.

#### **45. CENTERS FOR DISEASE CONTROL AND PREVENTION ORDER ON REQUIREMENTS FOR PERSONS TO WEAR MASKS WHILE ON CONVEYANCES AND AT TRANSPORTATION HUBS**

- A. Compliance with CDC Mask Order. The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), is within the meaning of “Federal Requirement” as that term is defined in this Master Agreement. One of the objectives of the CDC Mask Order is “maintaining a safe and operating transportation system.” The Recipient agrees that it will comply, and will require all Third-Party Participants to comply, with the CDC Mask Order.
- B. Enforcement for non-compliance. The Recipient agrees that FTA may take enforcement action for non-compliance with the CDC Mask Order, including:
  1. Enforcement actions authorized by 49 U.S.C. § 5329(g);
  2. Referring the Recipient to the CDC or other Federal authority for enforcement action;
  3. Enforcement actions authorized by 2 CFR §§ 200.339 – 340; and
  4. Any other enforcement action authorized by Federal law or regulation.



## **46. ADA ACCESS**

The Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments hereto.

The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party contractors must comply with their responsibilities under Titles I thru V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies. The following clauses should be included for the appropriate procurement action.

- A. Rolling Stock Accessibility: Rolling stock must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Vehicles acquired (with limited exceptions) should be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;
- B. Purchased Transportation Services Accessibility. A third party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 et seq. and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. MART advises its third party contractors operating public transportation services to review the requirements for public entities in this context which include but are not limited to:
  - 1. Complementary Paratransit Service. Requirements that public entities providing fixed-route service provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service.
  - 2. Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services
- C. Design and Construction Accessibility. Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 et seq. and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB's "Americans with Disabilities

Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

## CERTIFICATE OF NONDEBARMENT / SUSPENSION

- To be completed by the Prime Contractor of this bid and any Subcontractors that will be affiliated with the work in this bid.
- Return the completed form with the original bid package.

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

The Lower Tier Participant (Applicant for a third party subcontract or subgrant under an FTA project),  
Hultz/BHU Engineers hereinafter referred to as *Vendor*, certifies, by  
submission of this document, that neither it nor its principals is presently debarred, suspended,  
proposed for debarment, declared ineligible or voluntarily excluded from participation in this  
transaction by any federal department or agency.

Where the Vendor is unable to certify to any of the statements in this certification, such Vendor shall  
attach an explanation to this submittal.

The Vendor, Hultz/BHU Engineers, certifies or affirms the truthfulness and  
accuracy of the contents of the statements submitted on or with this certification and  
understands that the provisions of 31 U.S.C. Section 3801 et seq. are applicable thereto.



\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
President

Title of Authorized Official

\_\_\_\_\_  
October 24, 2023

Date

**THIS FORM SHALL BE COMPLETED BY THE PRIME CONTRACTOR AND ANY  
SUBCONTRACTORS THAT WILL BE AFFILIATED WITH THE WORK IN THIS BID. RETURN ALL  
COMPLETED FORMS WITH ORIGINAL BID PACKAGE.**

## CERTIFICATION REGARDING LOBBYING BY CONTRACTOR (FTA)

Pursuant to 40 CFR Part 20 (which is by this reference incorporated herein), the undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL *Disclosure Form to Report Lobbying*, in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Hultz/BHU Engineers, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.



Rick Hultz

Signature of Contractor

Print Name

President

Title

1111 Fawcett Avenue, Suite 100

Address

October 24, 2023

Date

Tacoma, WA 98402

City

State

Zip

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

**EXHIBIT C**  
**PROFESSIONAL SERVICES AGREEMENT**  
**(ATTACHED)**

***City of Everett***  
**Request for Qualifications**

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**RFQ No. 2023-093**

**Request for Qualifications**

**Everett Main Library HVAC and Controls Replacement  
South Precinct Controls Replacement and Maintenance  
Everett Station Controls Replacement and Maintenance**

City of Everett  
Procurement Division  
2930 Wetmore Ave, Suite 9E  
Everett WA 98201  
(425) 257-8901

City of Everett  
**REQUEST FOR QUALIFICATIONS**

RFQ No.2023-093

**EVERETT MAIN LIBRARY HVAC and CONTROLS REPLACEMENT  
SOUTH PRECINCT CONTROLS REPLACEMENT and MAINTENANCE  
EVERETT STATION CONTROLS REPLACEMENT and MAINTENANCE**

**INTRODUCTION & SUBMITTAL LOCATION**

Statements of Qualifications will be received will be at the City of Everett Procurement Office, Monday – Friday from 8:00 a.m. – 3:30 p.m. **2930 Wetmore Avenue, Suite 9E, Everett, Washington 98201.**

This RFQ contains three sections.

- Section One contains a description of the proposed project.
- Section Two contains general information, including the RFQ schedule and contact information, including e-mail and phone number for the RFQ Coordinator.
- Section Three contains submittal requirements and explains how the city will evaluate Statements of Qualifications.

**OBJECTIVE**

The City is requesting statements of qualifications from architects and engineers with experience in HVAC and control systems to provide design, engineering, permitting, and construction documents for a public bid. There are some minor repairs and modifications to each HVAC system, as noted throughout this Request for Qualifications.

This request includes multiple design scopes of work as follows:

1. The City of Everett intends to replace the existing HVAC equipment and related controls at the Main Branch of the Everett Public Library located at 2702 Hoyt Ave, Everett, WA 98201. The scope includes design, engineering, permitting, construction documents, and construction management for the replacement of packaged rooftop air conditioners and the associated direct digital (DDC) control system.
2. The City of Everett intends to replace the existing controls at the South Precinct located at 1121 SE Everett Mall Way, Everett, WA 98208. The scope includes design, engineering, permitting, construction documents, and construction management for the replacement of the direct digital (DDC) control system along with the replacement of VAV boxes.
3. The City of Everett intends to replace the existing controls at the Everett Station located at 3201 Smith Ave, Everett, WA 98201. The scope includes design, engineering, permitting, construction documents, and construction management for the replacement of direct digital (DDC) control system along with VAV controllers. The design and construction for this portion is funded by a Federal Transit Administration grant and has associated non-negotiable clauses that must be agreed to.



## **SCHEDULE**

The following anticipated schedule contains major milestones and may be modified:

September 28, 2023	Release of Request for Statement of Qualifications
October 26, 2023	Submittals Due
No later than: October 27, 2023, at 12:00 p.m.	Provide an electronic copy of submittal.
November 20, 2023	Potential Interviews of Shortlisted Firms
December 2023	Selection of Preferred Architect or Engineer

## **NUMBER OF COPIES REQUIRED**

Proposers must submit one unbound **original statement of qualifications and one bound copy in a sealed envelope**. The project name must be clearly indicated on the outside package. One electronic copy in Adobe Acrobat PDF file format is required to be e-mailed to the RFQ coordinator and received no later than one day after submittals are due.

## **SECTION ONE**

### **1.1 SCOPE OF SERVICES FOR ALL THREE PROPOSED PROJECTS**

Services must consist of the following:

A. Design Development

- Design Development Phase – the Architect or Engineer (A/E) shall provide those services necessary to prepare 30% design documents, the design development documents consisting of drawings and other documents to fix and describe the size and character of the entire project for approval by the City.
- Permit Design Phase – the A/E shall provide those services necessary to prepare permit design documents, the design development documents consisting of drawings and other documents to fix and describe the size and character of the entire project for approval by the City.
- The City wishes to utilize state of the art techniques and technology for this project. Consideration must be given to availability of materials, equipment and labor, construction sequencing and scheduling, user safety, and maintenance requirements.
- All three project design phases will run concurrently.

B. Permit Documents

- Permit Documents – the A/E must provide the services necessary to prepare for approval by the City, all permit related documents.
- Permit Documents must consist of drawings, specifications, and other documents required by Local, State, and Federal Agencies.

C. Construction Documents

- Construction Documents Phase – the A/E must provide the services necessary to prepare for approval by the City, from the approved design development drawings.
- Construction Documents must consist of drawings, specifications, and other documents describing the requirements for construction of the project; and bidding and contracting for the construction of the project.

D. Bidding

- Bidding Phase – the A/E, following the City’s approval of the Construction Documents and the most recent statement of probable construction cost, shall provide those services necessary for the A/E to assist the City in obtaining bids and in awarding the contract for construction.

E. Construction Contract Administration

- Construction Contract Administration Phase – the A/E shall provide services necessary for the administration of the construction contract as set forth in the General Conditions and the Contract for Construction.

F. Project Closeout

- Services initiated upon notice that the work is substantially complete, consisting of a detailed inspection for conformity of the work to the contract documents, issuance of certificate of substantial completion, issuance of a list of remaining work required (punch list), final inspections, receipt and transmittal of warranties, affidavits, receipts, releases and waivers of lien or bonds, permits, and issuance of final certificate for payment.
- Record Documents (As-Built) Receive and review the contractors marked up field records. Supply the record documents to the City. Which includes, transferring the contractor’s record of field changes to the original record drawings may be authorized by the City as an additional service.
- A summary analysis, if a Project Labor Agreement and Community Workforce Agreement was used during construction, regarding general contractor compliance with terms of the agreements.

G. Cost Estimating

Services shall include cost estimating at the following design stages. Please break down this cost for the three buildings verses one lump sum:

- 30% Cost Estimate (Design level)
  - Services consisting of development of a probable construction cost from quantity surveys and unit costs of construction elements for the project.
  - Parametric costs reflect the level of the 30% design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program.
  - Assist the City with analyzing scope, schedule, and budget options to stay within the MACC.
- 60% Cost Estimate (Design Development level)
  - Services consisting of development of a probable construction cost from quantity

surveys and unit costs of building elements for the project.

- Parametric costs reflect the level of the 60% design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program.
- Assist the City with analyzing scope, schedule, and budget options to stay within the MACC.
- 90% Cost Estimate (Pre-Bid Construction Documents level)
  - Services consisting of development of a probable construction cost from quantity surveys and unit costs of building elements for the project.
  - Parametric costs reflect the level of the 90% design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program.
  - Assist the City with analyzing scope, schedule, and budget options to stay within the MACC.

## **1.2 CONDITIONS OF THE AGREEMENT**

The City has not prepared a detailed scope for the design phase work to be performed under this contract. The City will provide a scope of work outline to the selected consultant. The selected consultant will enter into a Professional Services Agreement, which will establish a maximum contract amount. The City will authorize some or all of the work elements described above on a task basis.

The form of contract used for this project is the City of Everett standard Professional Services Agreement which is included in the Appendix.

## **1.3 PROJECT 1 – MAIN LIBRARY**

### **A. Main Library Design Objective**

The City of Everett intends to replace the existing HVAC and DDC systems serving the Main Library to reduce system energy use, increase system reliability, and improve occupant health and comfort. The project scope includes replacement of the (6) existing packaged air conditioners with electric heat with (9) variable air volume high efficiency packaged heat pumps, relocation of (1) of the RTU units, installation of supplemental zone heating, and replacement of the existing DDC system with connected wireless thermostats and controls. Design will include a review of system sizing based on revised building occupancy and use, changes to system ducting, and modifications to (1) system with variable air volume zone control. To be included is the design of necessary electrical and structural modifications, and any noise or architectural screening, if required.

### **B. Project Description**

- Three (3) of the units will be replaced with minimal modification.
- One (1) 7.5-ton unit is to be relocated and connected to existing abandoned ducting.
- One (1) 80-ton unit is to be divided into (3) smaller units to increase the number of control zones and allow the use of more readily available and easier to service unitary equipment.
- One (1) 7.5-ton unit with multiple electric duct heaters is to be divided into (2) smaller units, allowing the removal of the duct heaters and most of the associated roof top ductwork. Small electric wall heaters will be added in 2 locations and interlocked with the cooling system.

- One (1) 25-ton unit serves a changeover variable air volume system, which will be modernized with a new sequence of operation and controls. Small electric wall heaters will be added in 2 locations and interlocked with the cooling system.
- The A/E team will coordinate with Snohomish County PUD to maximize conservation grant funding. However, at this time no energy auditing or energy modeling is required.
- Scope will include independent test and balance, and commissioning.
- The library will remain open during design and construction. The A/E team will participate in developing the construction sequencing and schedule.

C. Project Schedule

The proposed project schedule is as follows. Note - all three parts of this project will run concurrently:

- 30% Design            3 months
- Permit Design       3 months
- 90% Design          3 months
- Bid                    2 months
- Build                  3 months

D. MACC

The estimated Maximum Allowable Construction Cost (MACC) is:

- \$2,500,000 -This includes all materials, equipment, and labor.

## 1.4 **PROJECT 2 – SOUTH PRECINCT**

A. South Precinct Objective

The City of Everett intends to replace the existing DDC systems serving the South Precinct to reduce system energy use, increase system reliability, and improve occupant health and comfort. The project scope includes the replacement of the existing DDC system with connected wireless thermostats and controls, along with installing heat in the VAV boxes on the first-floor east perimeter. The design will include a review of system sizing based on revised building occupancy and use and review of the variable air volume zone controls. Additional scope may include the design of necessary electrical and structural modifications and any noise or architectural screening if required.

B. Project Description

- Replacement of the existing DDC system. BACNET IP with Niagara 4 front end. Per the City of Everett Resource Conservation Program specifications. Include the following alternates in the design that may be removed from the project based on pricing.
  - I. Demand control ventilation at zone level.
  - II. Occupancy sensing at zone level for standby setback
- Replacement of the existing VAV boxes with FP VAV boxes with electric heat on the first-floor east perimeter. The following zones are affected, Zones: TU-1, TU-3, TU-4, TU-5, and TU-6

- HVAC RTU repairs or refurbishment as needed (beyond controls). Maintenance records will be made available to the Design Consultant/Architect/Mechanical Engineer.
- The Design team will coordinate with Snohomish County PUD to maximize conservation grant funding. However, currently, no energy auditing or energy modeling is required.
- Scope will include independent test and balance and commissioning.
- The South Precinct will remain open during design and construction. The Design team will participate in developing the construction sequencing and schedule.

#### C. Project Schedule

The proposed project schedule for the South Precinct is as follows. Note - all three parts of this project will run concurrently:

- 30% Design            2 months
- Permit Design       1.5 months
- 90% Design          1.5 months
- Bid                    2 months
- Build                  2 months

#### D. MACC

The estimated Maximum Allowable Construction Cost (MACC) is:

- \$550,000 -This includes all materials, equipment, and labor.

### 1.5 **PROJECT 3 - EVERETT STATION**

#### A. Proposed Project Objective

The City of Everett intends to replace the existing Alerton DDC systems serving the Everett Station to reduce system energy use, increase system reliability, and improve occupant health and comfort. The project scope includes the replacement of the existing DDC system with connected wireless thermostats and controls, along with the replacement of the VAV controllers. The design will include the replacement of all the HVAC controls, including VAV controllers, a review of current maintenance records and a plan to address any deferred maintenance, repair and/or replacement of bathroom exhausts throughout the building to make them all operational, installation of destratification fans in the Great Hall, design of a new stand-alone HVAC system for the server/computer room and a complete balancing and recommissioning of all systems which shall include the setting of schedules based on occupancy, setpoints, DAT reset and DAP reset. The new control systems shall be BACNET IP with Niagara 4 front end per City of Everett Resource Conservation Program specifications. Additionally, alternates shall be included in the plan to add occupancy sensing and demand control ventilation.

- Additional scope may include the design of necessary electrical and structural modifications if required.

#### B. Project Description

- Replacement of the existing DDC system. BACNET IP with Niagara 4 front end. Per City of Everett Resource Conservation Program specifications. Include the following alternates in the design that

may be removed from the project based on pricing.

- I. Demand control ventilation at zone level.
- II. Occupancy sensing at zone level for standby setback
- HVAC RTU repairs or refurbishment as needed (beyond controls). Maintenance records will be made available to the Design Consultant/Architect/Mechanical Engineer.
- The Design team will coordinate with Snohomish County PUD to maximize conservation grant funding. However, at this time, no energy auditing or energy modeling is required.
- Scope will include independent test and balance and commissioning.
- The Everett Station will remain open during design and construction. The Design team will participate in developing the construction sequencing and schedule.
- The design and construction of this portion is grant funded by Federal Transit Administration. The attached clauses are non-negotiable.

#### C. Project Schedule

The proposed project schedule for Everett Station is as follows. Note all three parts of this project will run concurrently:

- 30% Design            2 months
- Permit Design       1.5 months
- 90% Design          1.5 months
- Bid                    2 months
- Build                  2 months

#### D. MACC

The estimated Maximum Allowable Construction Cost (MACC) is:

- \$1,498,762 -This includes all materials, equipment, and labor.

## **SECTION TWO**

### **GENERAL INFORMATION**

#### **2.1 RFQ COORDINATOR**

Upon release of this Request for Qualifications (RFQ), all communications concerning this process must be directed to the RFQ Coordinator listed below:

Theresa Bauccio-Teschlog, MBA, NIGP-CPP, CPPB  
City of Everett Procurement  
2930 Wetmore Avenue, Suite 9E, Everett, WA 98201  
Phone: (425) 257-8901  
tbauccio@everettwa.gov

After issuance of the RFQ, unauthorized contact regarding the RFQ with other City of Everett employees may result in disqualification. Any oral communications will be considered unofficial and non-binding on the City of Everett. Proposers must only rely on written statements issued by the RFQ Coordinator.

#### **2.2 ADDENDA**

Changes to this RFQ will be made only by formal written addenda issued by the RFQ Coordinator named above.

Respondents are responsible for checking the City of Everett website for the issuance of any addenda prior to submitting a Statement of Qualifications.

The address is <https://www.everettwa.gov/2713/Bid-opportunities>

#### **2.3 STATEMENT RESPONSE DATE AND LOCATION**

The consultant's Statement of Qualifications must be submitted in a sealed envelope, in its entirety, not later than the date and time, and at the location listed on page one of this RFQ. Statements arriving after the deadline may be returned unopened to their senders. All statements and accompanying documentation will become the property of the City of Everett and may not be returned.

Senders assume the risk of the method of dispatch chosen. The City of Everett assumes no responsibility for delays caused by any delivery service. Postmarking by the due date will not substitute for actual statement receipt. Statements will not be accepted late, nor will additional time be granted to any proposer. Statements may not be delivered by facsimile transmission or other telecommunication or by electronic means.

#### **2.4 NON-ENDORSEMENT**

As a result of the selection of a proposer, the City of Everett is neither endorsing nor suggesting that the proposer's service is the best or only solution. The proposer agrees to make no reference to the City of

Everett in any literature, promotional material, brochures, sales presentation or the like without the express written consent of the City of Everett.

## **2.5 PUBLIC DISCLOSURE**

### **1. Property of the City of Everett**

All materials (including, for example, proposals and statements of qualification) submitted in response to this RFQ shall become the property of the City of Everett. Selection or rejection of a proposal does not affect this. In this section, the term “proposal” is generic and refers to proposals, statements of qualification, letters of interest and any other material submitted in response to this RFQ.

### **2. Proposals are Public Records**

Pursuant to Chapter 42.56 RCW and other statutes regarding public agencies, all materials (including, for example, proposals) submitted under this RFQ shall be considered public records and with limited exceptions will be available for inspection and copying by the public. Except to the extent protected by state and or federal laws, proposals shall be considered public documents and available for review and copying by the public.

### **3. Public Records Exemption**

Trade secrets (as defined in RCW 19.108.010) or other proprietary information submitted by a Proposer in connection with this RFP might not be subject to public disclosure under chapter 42.56 RCW if the proposer specifically states in writing the reasons why protection from disclosure is necessary and identifies the data or materials to be protected. Proposers shall specifically designate and clearly label as “CONFIDENTIAL” any and all such materials or portions thereof that they deem to contain trade secrets or other proprietary information. Proposers should carefully consider what is truly confidential and should not mark an entire proposal as confidential. The proposer shall provide the legal basis for the exemption to the City upon request. Proposers are advised that this exemption is subject to judicial review and the proposer’s designation of confidential may or may not be upheld by a Court.

### **4. Proposals Not Marked as Confidential**

If a proposal or other material does not clearly identify the “CONFIDENTIAL” portions, the City will not notify the proposer that its proposal will be made available for inspection and copying, and the City may publicly disclose such non-clearly identified portion with no liability whatsoever to the proposer.

### **5. Process for Disclosing Information**

If a request is made for disclosure of material or any portion marked “CONFIDENTIAL,” the City will determine whether the material should be made available under the law. If the City determines that the material is subject to disclosure, the City will seek to notify the Proposer of the request and allow the proposer ten (10) business days after such notification to take appropriate legal action in Snohomish County Superior Court at the proposer’s sole expense and liability. If the proposer does not within such ten (10) business days serve the Office of the City Attorney with a copy of an order entered by the Superior Court that expressly prohibits the City



from disclosure of the material marked "CONFIDENTIAL," then the proposer will be deemed to have consented to the public disclosure of the material marked "Confidential" and the City may publicly disclose such material without any liability whatsoever to proposer.

## **6. Indemnification by Proposer**

To the extent that the City withholds from disclosure all or any portion of proposer's material marked "CONFIDENTIAL", the proposer, by submitting a proposal in response to this RFP, agrees to indemnify, defend and hold harmless the City of Everett from all lawsuits, liabilities, losses, damages, penalties, attorneys' fees and costs the City incurs arising from or relating to such withholding from disclosure.

## **7. Consent to Procedure**

Proposers, by submission of materials marked "CONFIDENTIAL", acknowledge and agree that the City will have no obligation to advocate for nondisclosure in any forum and has no liability whatsoever to any proposer for the disclosure of any material or record of any kind when that disclosure is in accordance with applicable law or in accordance with an order applying applicable law entered by the Snohomish County Superior Court or a Washington appellate court. By submitting a proposal, the proposer consents to the procedure in this Section as its sole remedy and waives and releases all claims against the City arising from the City's actions taken in accordance with this procedure.

### **2.6 NO OBLIGATION TO BUY**

The City of Everett reserves the right to refrain from contracting with any proposer. The release of this RFQ does not compel the City of Everett to purchase.

### **2.7 COST OF PREPARING STATEMENTS**

The City of Everett is not liable for any costs incurred by proposers in the preparation and presentation of statements and demonstrations submitted in response to this RFQ.

### **2.8 CONDITIONAL COMMITMENT OF FUNDS**

Notwithstanding any provision of this RFQ, by submission of a proposal the proposer agrees and acknowledges that this RFQ does not constitute a commitment of funds or site approval.

### **2.9 PROTESTS**

All protests regarding this RFQ are governed by EMC 3.46 "Bid Protest Procedures."

## **SECTION THREE**

### **STATEMENT OF QUALIFICATIONS**

#### **SUBMITTAL REQUIREMENTS AND EVALUATION**

##### **3.1 SUBMITTAL INFORMATION**

The statements of qualifications must be limited to thirty (30) single-sided pages. The front and back cover, required forms, and clauses are not considered a page. No additional information or pamphlets will be considered by the selection committee. **Contact information, including contact person, e-mail, and phone number, should be provided on the first page of the submittal.**

Title each page with your name or company name and note the section number for each response.

Include the completed Federal Transit Administration clauses and forms with the submission.

**Statements of Qualifications must include the Signed Authorization contained on the last page of this RFQ or they may be deemed non-responsive and may not be evaluated.**

##### **3.2 SUBMITTAL FORMAT**

Statements of Qualification will be evaluated on the completeness of the information supplied in the submittal.

Submit Statements of Qualification with the following three-section format. Failure to clearly and completely provide all the information below may result in rejection as non-responsive.

##### **1. QUALIFICATIONS & EXPERIENCE**

Provide a general overview of your organization. At a minimum, answer the following questions:

- a) Describe your company. Include how long the company has been in business. Describe the qualifications of your company, its business experience and achievements.
- b) Who are you proposing to be the project manager for each design project if awarded this contract? What is their experience with this work and other aspects pertinent to this project? What are their years of experience, years in the profession, years with the firm, years of applicable licenses, and etc? Provide a list of three major projects that person has been involved in and their role.
- c) Provide names, tenure, roles, and responsibilities for each key team member engaged in providing the related services for each design project.

##### **2. APPROACH & CAPABILITY**

- a) Provide a letter of interest signed by a principal of the professional firm with a statement as to the location of the firm in relation to the size and scope of the project.
- b) What is the firm's availability to complete the concurrent project work within the stated time period?

- c) What other work does your firm have under way or is anticipated to be in progress during the time frame of this project.
- d) Describe your approach to the project. What achievements would you use to determine project success? Include how all three design projects will be designed concurrently.
- e) What risks do you foresee with this project?
- f) Describe your ability to estimate and forecast construction costs on similar projects.
- g) Describe your approach to analyzing whether a Project Labor Agreement and Community Workforce Agreement is beneficial to construct this project.

### **3. PERFORMANCE**

- a) Submit no more than five (5) completed relevant project experiences, within the past ten years that demonstrate successful contract performance similar in size and scope as described in this RFQ, including any government experience. Include the following for each reference:
  - Company name and full address
  - Point of contact name, title, e-mail address, and phone number
  - Contract title, number, start and completion dates
  - Contract value, description and order / service details

### **3.3 EVALUATION**

A numerical scale will be used to score each section for the written submittal. These track the submittal format on the previous two pages. The total score for each section will not exceed the maximum number of points set for that section. Scoring will be as follows:

Qualifications & Experience	40
Approach & Capability	45
Performance	15
Total	100

**Oral Interview:** Subsequent to the City's review of written submittals, the City may conduct interviews. If the City elects to do this, identical questions will be prepared and distributed to each team to be interviewed, as well as questions that are customized for each team. Additional questions both for and to the team may be addressed during oral interviews. Each team's demonstrated experience, qualifications, completeness, clarity, and professionalism as demonstrated through its oral presentation and answers to questions will be used in ranking teams in order of preference.

**City of Everett**  
**REQUEST FOR QUALIFICATIONS #2023-093**  
**EVERETT MAIN LIBRARY HVAC and CONTROLS REPLACEMENT**  
**SOUTH PRECINCT CONTROLS REPLACEMENT and MAINTENANCE**  
**EVERETT STATION CONTROLS REPLACEMENT and MAINTENANCE**

The undersigned hereby declares that he or she is duly authorized to complete and submit this Statement of Qualifications and that the statements contained herein are true and correct as of the date set forth below. Incomplete, incorrect or misleading information may be reason for a determination of non-responsibility by the City of Everett.

Company Name:		
Company Address:		
City:	State:	ZIP:
Tax ID #:	UBI #:	
Legal status of supplier organization, i.e., corporation, partnership, sole proprietorship.		
Diversity Certification (if applicable): <input type="checkbox"/> <b>Disadvantaged Business Enterprise (DBE)</b> <input type="checkbox"/> <b>Minority Business Enterprise (MBE)</b> <input type="checkbox"/> <b>Women Business Enterprise (WBE)</b> <input type="checkbox"/> <b>Minority Women Business Enterprise (MWBE)</b> Certification number:		
Website:	City of Everett Business License #	
Supplier Contact Name (if different from Authorizing Official):	Supplier Contact Title:	
Supplier Contact Email:	Supplier Contact Direct Phone:	
Supplier Contact Address (if different from above):		
City:	State:	ZIP:
Authorizing Official Name:	Authorizing Official Title:	
Authorizing Official Email:	Authorizing Official Phone:	
Authorizing Official Signature* and <b>Date</b> :          <div style="font-size: small; margin-top: 10px;">           *A signature means an original signature, a copy of an original signature, a PDF scan of an original signature, or a DocuSign/AdobeSign electronic signature.         </div>		



City of Everett

# Federal Transit Administration Clauses

Last updated: 1/13/2023

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## **1. SIMPLIFIED ACQUISITION THRESHOLD**

Required Clauses in Third Party Contracts. In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third-party contracts made by the Recipient under the Federal award must contain provisions covering the following.

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327.) The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

## **2. ACCESS TO RECORDS AND REPORTS**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

The U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all third party contract records (at any tier) as required under 49 U.S.C. § 5325(g); and (2) Sufficient access to all third party contract records (at any tier) as needed for compliance with applicable federal laws, regulations, and requirements or to assure proper management of Underlying Agreement as determined by FTA.

- A. **Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- B. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- C. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- D. **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors’ access to the sites of performance under this contract as reasonably may be required.

## **3. BONDING REQUIREMENTS - NOT APPLICABLE**

***Bonds are required for all construction or facility improvement contracts and subcontracts exceeding***



*the simplified acquisition threshold.*

#### **4. BUS TESTING - NOT APPLICABLE**

#### **5. BUY AMERICA REQUIREMENTS**

*This clause flows down and extends to all first-tier contractors and their contracts. It must be included in every first-tier contract.*

The contractor agrees to comply with 49 U.S.C 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

#### **6. BUILD AMERICA, BUY AMERICA ACT**

*This clause flows down and extends to all first-tier contractors and their contracts. It must be included in every first-tier contract.*

The contractor agrees to comply with the Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

- A. All iron and steel used in the project are produced in the United States – this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- B. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- C. All construction materials\* are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

\*Excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the

infrastructure project.

## **7. CARGO PREFERENCE REQUIREMENTS – NOT APPLICABLE**

### **A. Cargo Preference - Use of United States-Flag Vessels**

Include for all contracts in which ocean vessel is used to transport.

## **8. CHARTER SERVICE – NOT APPLICABLE**

## **9. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (Over 150K)**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

The Contractor agrees:

1. It will not use any violating facilities;
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
3. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1388).
4. It will report violations must to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

## **10. CIVIL RIGHTS AND EQUAL OPPORTUNITY**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

The City of Everett is an Equal Opportunity Employer. As such, the City of Everett and all third-party contractors and their contracts agree to prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City of Everett agrees to comply with the requirements of 49 U.S.C. § 5323(h)(3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

City of Everett and all third-party contractors and their contracts also agree to comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; (ii) Comply with Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; (iii) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; (iv) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; (v) FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements

and Guidelines for Federal Transit Administration Recipients;” and (vi) Follow other federal guidelines pertaining to EEO laws, regulations, and requirements.

The City of Everett also follows the most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance, U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and all other applicable federal guidance.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex, including gender identity.** The Contractor will prohibit discrimination based on race, color, or national origin in accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000d. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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 Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5. **Affirmative Action.** If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), take affirmative action that includes, but is not limited to: (A) Recruitment advertising, recruitment, and employment; 53 (B) Rates of pay and other forms of compensation; (C) Selection for training, including apprenticeship, and upgrading; and (D) Transfers, demotions, layoffs, and terminations.
6. **Equal Employment Opportunity Requirements for Construction Activities.** Comply, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), with: (i) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60; and (ii) Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

## **11. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### **A. Background and Applicability**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract. It is the prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subcontractors.*

### **B. Disadvantaged Business Enterprise (DBE) Participation**

The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 applies to this contract. The requirements of this contract are to encourage DBE participation and to report race neutral accomplishments semi-annually. No preference will be included in the evaluation of bids, no minimum level of DBE participation shall be required as condition for receiving an award and bids/Bids will not be rejected or considered non-responsive on that basis.

### **C. Disadvantaged Business Enterprises (DBE) Definitions**

1. DBE is an incorporated or unincorporated small business concern or joint venture, as defined by Section 3 of the Small Business Act and implementing regulations, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$14 million over the previous three fiscal years. The Secretary shall adjust this figure from time to time for inflation. A DBE must be certified by the Washington State Office of Minority and Women's Business Enterprises.
  - a. At least 51 percent of which is owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and,
  - b. The management and daily business operations of which are controlled by the socially and economically disadvantaged individuals who own the business.
2. Socially and Economically Disadvantaged Individuals are those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:

- a. Black Americans - which includes persons having origins in any of the black racial groups of Africa;
- b. Hispanic Americans - which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
- c. Native Americans - which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
- d. Asian-Pacific Americans - which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories or the Pacific and the Northern Marianas;
- e. Asian-Indian Americans - which includes persons whose origins are from India, Pakistan and Bangladesh;
- f. Women - regardless of race, ethnicity or origin; and,
- g. Other - individuals found to be socially and economically disadvantaged by the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.

**D. Disadvantaged Business Enterprises**

- 1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of DBEs is 10%. The agency's overall goal for DBE participation is 2%. A separate contract goal has not been established for this procurement.
- 2. The successful bidder/Bidder will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- 3. The contractor must promptly notify the City of Everett, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City of Everett.

**E. Affirmative Efforts to Solicit DBE Participation**

DBE firms shall have equal opportunity to compete for and perform subcontracts which the Contractor enters into pursuant to this contract. Contractors are encouraged to:

- 1. Advertise opportunities for subcontractors or suppliers in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g. newspapers, journals, etc.) or by soliciting bids/Bids directly from DBEs.
- 2. Utilize the services of available minority community-based organizations, minority contractor

groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses, such as the Office of Minority and Women's Business Enterprises listed below.

3. Establish delivery schedules, where requirements of the contract allow, that encourage participation by DBEs and other small businesses.
4. Achieve attainment through joint ventures.

In the absence of a mandatory goal, all DBE participation that is attained on this project will be considered as "race neutral" participation and will be reported as such.

**F. Information Regarding DBEs**

Information regarding Disadvantaged Business Enterprises currently certified with the State of Washington is available at:

Office of Minority and Women's Business Enterprises

PO Box 41160

Olympia, WA 98504-1160

(800) 208-1064 Toll Free

(360) 586-7079 Fax

Or visit their website at <http://www.omwbe.wa.gov/>

**G. Procedures Between Award and Execution**

After award of the contract, the successful bidder shall provide the following additional information:

A list of all firms who submitted a bid or quote in an attempt to participate in this project whether they were successful or not. Include the correct business name, federal employer identification number (optional), and a mailing address.

**H. Required DBE Contract Clauses**

**1. Contract Assurance**

*The following clause is incorporated in every FTA-assisted contract and subcontract:*

The Contractor 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 FTA-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 such other remedy as City of Everett deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;

- c. Liquidated damages; and/or
- d. Disqualifying the Contractor from future bidding as non-responsible per 49 CFR§ 26.13(b).

**2. Prompt Payment and Retainage**

*The following clause is incorporated in every FTA-assisted prime contract:*

When payment is received by a Contractor or Subcontractor for work performed, the Contractor or Subcontractor shall pay to any Subcontractor no later than thirty (30) days after the receipt of the payment, amounts allowed the Contractor on account of the work performed by the Subcontractor, to the extent of each Subcontractor's interest therein, unless the payment otherwise is excused under the provisions of RCW 39.04.250. This requirement shall flow down from Contractor to all lower tier subcontractors.

The City of Everett will not withhold any retainage or payments owing to the Contractor. The Contractor shall not withhold any retainage or payments owing to any Subcontractor. No delays or postponements of payment from the above referenced timeframe may occur unless approved in writing by the City. This clause applies to the DBE and non-DBE subcontracts.

If an DBE has not been paid on time, it should seek to resolve issues with the Contractor or Subcontractor, if the DBE is on a lower tier. If a satisfactory resolution is not arrived at, the DBE may approach the City of Everett Procurement Manager for assistance.

**3. Resolving Payment Disputes, Discrepancies and Delays**

Per 49 CFR §26.29 Contractors shall include in their subcontracts language providing that Contractor and Subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.

Further, if a payment to a Contractor by the City of Everett is in dispute, has discrepancies or is delayed for any other reason, Contractor shall pay its DBE subcontractor(s) in a timely manner, without waiting for receipt of payment from the City of Everett.

**4. Use of DBE Financial Institutions:**

Per 49 CFR Part 26.27, Contractors and Subcontractors are encouraged to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in their community and make reasonable efforts to use these institutions. The list of such firms is available at: [www.federalreserve.gov/releases/mob](http://www.federalreserve.gov/releases/mob).

**I. Small Business Participation**

Bidders on public works contracts greater than \$100,000 must identify and provide specific subcontracts appropriate for small business participation.

Definition of Small Business per the Code of Federal Regulations (CFR), Title 49: Transportation, Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, Subpart A – General, Paragraph 26.5:

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and

Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipt specified in Paragraph 26.65(b).

Paragraph 26.65: What rules govern business size determinations?

1. To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.
2. Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.
3. The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

[74 FR 15224, Apr. 3, 2009]

## **12. VETERAN'S EMPLOYMENT**

To the extent practicable, Contractors shall give a hiring preference to veterans (as defined in Section 2108 of title 5 (5 USC 2108)) who have the requisite skills and abilities to perform the construction work required under a third-party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## **13. TERMINATION OF DBE SUBCONTRACTOR**

The Contractor shall not terminate the DBE subcontractor(s) listed in the **bid documents** without the City of Everett's prior written consent. The City of Everett may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five (5) days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the City of Everett in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated.

### **A. Continued Compliance**

The City of Everett shall monitor the Contractor's DBE compliance during the life of the Contract. In



the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the City of Everett that** summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the City of Everett. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder shall permit:

- The City of Everett to have access to necessary records to examine information as it deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the City of Everett, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in the solicitation.

**B. Sanctions for Violations**

If at any time the City of Everett has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the City of Everett may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

**14. PREVAILING WAGE AND ANTI-KICKBACK – NOT APPLICABLE**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included*

*in every tier contract.*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Davis-Bacon Act, (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

## **15. CONTRACT WORK HOURS AND SAFETY STANDARDS (40 U.S.C. §§ 3701 – 3708)**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of forty (40)

hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the 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 this clause in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA 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 moneys 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 this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section 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 this agreement.

## **16. CONTRACT WORK HOURS AND SAFETY STANDARDS FOR AWARDS NOT INVOLVING CONSTRUCTION**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) 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.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

## **17. ENERGY CONSERVATION**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

The contractor agrees to comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 CFR Part 622, subpart C.

## **18. FLY AMERICA**

*This clause flows down and extends to the first-tier contractor only.*

A. **Definitions.** As used in this clause:

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **B. Statement of Unavailability of U.S.-Flag Air Carriers**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

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(End of statement)

The Contractor shall include the substance of this clause, including this paragraph, in each subcontract or purchase under this contract that may involve international air transportation.

## **19. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

*This clause applies to any tier contract that is expected to exceed \$25,000. The Contractor, including any of its officers or holders of a controlling interest, is obligated to inform the Recipient, the City of Everett, whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should the Contractor be included on such a list during the performance of this project, it shall so inform the Recipient.*

(Executive Orders 12549 and 12689). A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: (i) Complies with federal debarment and suspension requirements; and (ii) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.

The Contractor shall comply and facilitate compliance with U.S. DOT regulations requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200. "Nonprocurement Suspension and Debarment," which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- A. Debarred from participation in any federally assisted Award;
- B. Suspended from participation in any federally assisted Award;
- C. Proposed for debarment from participation in any federally assisted Award;
- D. Declared ineligible to participate in any federally assisted Award;
- E. Voluntarily excluded from participation in any federally assisted Award; or
- F. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City of Everett. If it is later determined by the City that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Everett, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2

C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **20. DISCLOSURE OF LOBBYING ACTIVITIES (31 U.S.C. § 1352)**

*The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant.*

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors 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 an 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 must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

## **21. NO FEDERAL GOVERNMENT OBLIGATION OR LIABILITY**

*This clause applies to third party contracts that are federally funded and flows down to every tier.*

- A. The Federal Government does not and shall not have any commitment or liability related to this Contract or its underlying agreements, to any participant at any tier, or to any other person or entity that is not a party (FTA or the Agency) to the underlying agreement; and
- B. Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Contract at any tier that may affect any underlying agreement, the Federal Government does not and shall not have any commitment or liability to any participant or other entity or person that is not a party (FTA or the Agency) to this Contract/Task Order or any underlying agreement.

## **22. PATENT RIGHTS AND RIGHTS IN DATA**

*If the recipient or subrecipient wishes to enter into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award.*

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the City of Everett intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: 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 FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings, and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

- A. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
  - 1. Any subject data developed under the Contract, whether or not a copyright has been obtained; and any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- B. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- C. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless 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 that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- D. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- E. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
- F. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.
- G. **Rights to Inventions Made Under a Contract or Agreement.** If the federal award meets the

definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**23. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES – NOT APPLICABLE**

**24. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The Program Fraud clauses applies to all third-party contracts that are federally funded. It extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 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. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, 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 on the Contractor to the extent to the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor 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 subcontractor who will be subject to the provisions.

**25. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**

*This clause applies to all third-party contractor and their contracts at every tier.*

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):



- A. **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- B. **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
- C. **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

## **26. RECOVERED MATERIALS - RECYCLED PRODUCTS**

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

## **27. SAFE OPERATION OF MOTOR VEHICLES**

*The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. It flows down to all third-party contractors at every tier.*

### **A. Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the City of Everett.

### **B. Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

## **28. SCHOOL BUS OPERATIONS – NOT APPLICABLE**

## **29. SEISMIC SAFETY**

*The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings. This clause flows down from FTA recipients and subrecipients to first tier contractors to assure compliance with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.*

The contractor 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 (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor 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.

## **30. SUBSTANCE ABUSE REQUIREMENTS – NOT APPLICABLE**

## **31. TERMINATION**

*All contracts in excess of \$10,000 must address the termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement. This clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.*

### **A. Termination for Convenience or Default (Architect and Engineering)**

The City of Everett may terminate this contract in whole or in part, for the City's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the City's Procurement Professional all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. The City of Everett has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the City, the City's Procurement Professional shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the City may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the City.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

### **B. Opportunity to Cure (General Provision)**

The City, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor two weeks in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) business days after receipt by Contractor of written notice from the City setting forth the nature of said breach or default, the City of Everett shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**C. Waiver of Remedies for any Breach**

In the event that the City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

**32. VIOLATION AND BREACH OF CONTRACT**

*All contracts in excess of the Simplified Acquisition Threshold (currently set at \$250,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. The Violations and Breach of Contracts clause flow down to all third-party contractors and their contracts at every tier.*

**A. Rights and Remedies of the City of Everett**

The City of Everett shall have the following rights in the event that the City of Everett deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

**B. Rights and Remedies of Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the City of Everett, the Contractor expressly agrees that no default, act or omission of the City of Everett shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract, unless the City directs Contractor to do so, or to suspend or abandon performance.

**C. Remedies**

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the City of Everett will have all remedies in law and equity, including the right to specific performance, without further

assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the City takes action contemplated herein, the City will provide the Contractor with sixty (60) days written notice that the City considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

**D. Disputes**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of City's Project Manager. This decision shall be final and conclusive unless within ten (10) business days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City Clerk. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Procurement Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

**E. Performance during Dispute**

Unless otherwise directed by the City of Everett, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**F. Claims for Damages**

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or any of its employees, agents or others for whose acts it is legally liable, a claim for damages, therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**G. Remedies**

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Everett and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within in Washington State in which the City of Everett is located.

**H. Rights and Remedies**

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Everett or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**33. PROTEST AND APPEALS**

Procurement Protest Procedures are available for review at:

<https://www.codepublishing.com/WA/Everett/#!/Everett03/Everett0346.html#3.46>

**34. FEDERAL CHANGES**

Any proposed change in this contract shall be submitted to the City of Everett for its prior approval. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (28) dated February 9, 2021) between Purchaser and FTA , or as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **35. INCORPORATION OF FTA TERMS**

The preceding and following provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F dated November 1, 2008, (Revised: July 29, 2009) are hereby incorporated by reference.

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf>

Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict either other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Everett requests which would cause City of Everett to be in violation of the FTA terms and conditions.

The contract agreement shall be binding upon and inure to the benefit of the contract parties, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.

### **36. TERMS OF THESE PROVISIONS AND COMPLIANCE**

- A. The Contractor must comply with all applicable federal laws, regulations, and requirements, and should follow applicable federal guidance, except as FTA determines otherwise in writing.
- B. To assure compliance with federal laws, regulations, and requirements, the Contractor must take measures to assure that other participants in all of its underlying agreements, including, but not limited to subcontracts or purchase or task orders with lower tier subcontractors, suppliers, consultants etc.) comply with applicable federal laws, regulations, and requirements, and follow applicable federal guidance, except as FTA determines otherwise in writing.
- C. FTA may take enforcement action if the Contractor violates an applicable federal law, regulation, or requirement, or does not follow applicable federal guidance.
- D. Parties agree that not every provision of this section will apply to every subcontractor or any underlying agreements. Criteria determining which federal laws, regulations, requirements, and guidance apply include the type of award, the federal law authorizing federal assistance for the award, the federal law, regulations, or requirements governing how the award must be implemented, the federal guidance pertaining to the award, and the Contractor's legal status as a business, a "private nonprofit entity," a "private for-profit entity," or an individual.
- E. As provided in federal laws, regulations, requirements, and guidance, FTA will enforce only those federal laws, regulations, requirements, and guidance that apply to the Contractor, or to any Project

and related activities encompassed in the award, any accompanying underlying agreements, and any amendments thereto.

- F. This Section does not have an expiration date. Section shall continue to apply to the Agency, the Contractor and all parties covered by any underlying agreements, until the Section is modified or superseded by a more recently enacted or issued applicable federal law, regulation, requirement, or guidance, or amendment.
- G. The Contractor must comply with U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200, which applies to this Contract or other underlying agreements.
- H. Except as FTA determines otherwise in writing, U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 1201, and subparts A through E of U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200, shall apply to the Contractor and all its subcontractors.

### **37. CONTRACTOR'S RESPONSIBILITY TO EXTEND FEDERAL REQUIREMENTS TO LOWER TIER PARTICIPANTS**

In certain circumstances, the Contractor's compliance with specific federal requirements depends on compliance by its lower tier participant(s) and therefore:

- A. **General.** The Contractor agrees to ensure that its lower tier participant(s) will comply with applicable federal requirements and follow applicable federal guidance.
- B. **Performance of the Contractor's Responsibilities.** If a lower tier participant is expected to fulfill any responsibilities typically performed by the Contractor, the Contractor agrees to ensure that the lower tier participant will carry out the Contractor's responsibilities in compliance with federal requirements, and provide enough information to each lower tier participant so that they understands that they will be expected to follow federal guidance.
- C. **Risk.** As provided in 2 CFR Part 1201, which incorporates by reference 2 CFR Part 200, the Contractor agrees to evaluate the risk involved before awarding an underlying agreement to any entity.
- D. **Lower tier agreements.** To comply with federal requirements, the Contractor agrees to enter into a written agreement with each lower tier participant in its underlying agreement and must include all appropriate provisions stating the lower tier participant's responsibilities to assure the Contractor's capability to comply with applicable federal requirements and guidance and specifying the responsibilities that the lower tier participant will fulfill on the Contractor's behalf.
- E. **Notice to lower tier participants.** The Contractor agrees to include notice in each lower tier agreement that:
  - 1. Federal requirements that apply to the Contractor or are included in the Contract/Task Order, the accompanying underlying agreement, and any amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in this

Contract/Task Order or the Contractors underlying agreements including any information incorporated by reference and made part of that underlying agreement; and

Applicable changes to those federal requirements will apply to this Contract/Task Order and the Contractor's underlying agreements and parties thereto at any tier.

### **38. TRAFFICKING OF PERSONS**

- A. Contractor agrees to comply and assures the compliance of each Lower Tier Participant with: Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); and the terms of this section, which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, per U.S. OMB's direction.
- B. Contractor further agrees that it and its employees that participate in this Contract/Task Order shall not:
  - 1. Engage in severe forms of trafficking in persons during the contract period, including all extensions or while Contract/Task Order is in effect,
  - 2. Procure a commercial sex act during the Contract or Task Order period, including all extensions, or
  - 3. Use forced labor in the performance of Contract or Task Order or any sub agreements thereunder.

### **39. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

This flows down to all third-party participants regardless of tier or value of the sub agreement.

Transactions Prohibited:

- A. The Contractor agrees to certify that, prior to entering into this Contract or any Lower Tier Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Contractor will obtain from the prospective Lower Tier Participant a certification that the Lower Tier Participant —
  - 1. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
  - 2. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

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**Signature of Contractor's Authorized Official**

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**Name and title of Contractor's Authorized Official**

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**Date**

- B. Contractors that cannot certify to the provisions as listed in this Section 38 above will be deemed not responsible due to the delay such non-certification would cause to the delivery of the Contract.

#### **40. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 512(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

#### **41. NOTIFICATION OF LEGAL MATTERS**

Each Third-Party Participant must include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

- A. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- B. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- C. Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.
- D. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all



liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.

- E. Enforcement. The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

Contractor agrees to notify the City of Everett immediately if it becomes involved in a current or prospective legal matter that may affect the federal government, which includes, but is not limited to, FTA's interests in the award, the accompanying underlying agreement, and any Amendments thereto, or the FTA's administration or enforcement of federal laws, regulations, and requirements. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or where the FTA may be named as a party to litigation or a legal disagreement in any forum for any reason.

Contractor will immediately notify the City of Everett if it has knowledge of potential fraud, waste, or abuse occurring in relation to this Contract. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the City of Everett.

The City of Everett reserves the right to seek all remedies available to it under law, including to procure substitute services or products elsewhere and recover its damages, attorneys' fees and costs from Contractor.

## **42. SOLID WASTES**

*Required Clause in Third-Party Contracts. In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third-party contracts made by the Recipient under the Federal award must contain provisions covering the following:*

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **43. ENVIRONMENTAL PROTECTION**

- A. General. The Recipient agrees to, and assures that its Third-Party Participants will, comply with all applicable environmental and resource use laws, regulations, and requirements, and follow

applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

- B. National Environmental Policy Act. An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Recipient agrees to, and assures that its Third-Party Participants will:
1. Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to:
    - a. Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139;
    - b. The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 CFR Part 1500 – 1508;
    - c. Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622;
    - d. Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note (35 Fed. Reg. 4247); and
    - e. Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
  2. Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation:
    - a. Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013;
    - b. Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and
    - c. Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
- C. Environmental Justice. The Recipient agrees to, and assures that its Third-Party Participants will, promote environmental justice by following:
1. Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, (59 Fed. Reg. 7629, 3 C.F.R. 1994 Comp., p. 859) as well as facilitating compliance with that Executive Order;
  2. U.S. DOT Order 5610.2(a), "Department of Transportation Updated Environmental Justice Order," 77 Fed. Reg. 27534, May 10, 2012; and
  3. The most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

- D. Other Environmental Federal Laws. The Recipient agrees to comply or facilitate compliance, and assures that its Third Party Participants will comply or facilitate compliance, with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order No. 11988, as amended, "Floodplain Management."
- E. Corridor Preservation. The Recipient agrees that:
1. It will not develop any right-of-way acquired under 49 U.S.C. § 5323(q) in anticipation of implementing its Award until all required environmental reviews for each Project or related activities have been completed; and
  2. It will follow FTA Final Guidance on the Application of 49 U.S.C § 5323(q) to Corridor Preservation for a Transit Project, October 27, 2014.
- F. Use of Certain Public Lands. The Recipient agrees to comply, and assures that its Third Party Participants will comply, with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 CFR Part 774, and referenced in 49 CFR Part 622.
- G. Historic Preservation. The Recipient agrees to, and assures that its Third-Party Participants will:
1. Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places.
  2. Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108.
  3. Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501, et seq.
  4. Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 CFR Part 800.
  5. Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
- H. Indian Sacred Sites. The Recipient agrees to, and assures that its Third Party Participants will, facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note (61 Fed. Reg. 26771).
- I. Mitigation of Adverse Environmental Effects.

1. The Recipient agrees to comply with all environmental mitigation measures that may be identified as conditions that the Federal Government might impose in its finding of no significant impact or record of decision or commitments in the environmental documents that apply to the Award, such as environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. § 303, and other environmental documents.
  2. The Recipient agrees that:
    - a. Any mitigation measures agreed on will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto;
    - b. Any deferred mitigation measures will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto as soon as agreement with the Federal Government is reached; and
- J. Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the Federal Government.

#### **44. FEDERAL “\$1 COIN” REQUIREMENTS**

The City of Everett agrees to comply with section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), therefore its equipment and facilities will be fully capable of accepting and dispensing \$1 coins when coins or currency are required to use that equipment or those facilities, and it will display signs and notices of the \$1 coin capability of its equipment and facilities on its premises, including vending machines, where coins or currency are used.

#### **45. CENTERS FOR DISEASE CONTROL AND PREVENTION ORDER ON REQUIREMENTS FOR PERSONS TO WEAR MASKS WHILE ON CONVEYANCES AND AT TRANSPORTATION HUBS**

- A. Compliance with CDC Mask Order. The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), is within the meaning of “Federal Requirement” as that term is defined in this Master Agreement. One of the objectives of the CDC Mask Order is “maintaining a safe and operating transportation system.” The Recipient agrees that it will comply, and will require all Third-Party Participants to comply, with the CDC Mask Order.
- B. Enforcement for non-compliance. The Recipient agrees that FTA may take enforcement action for non-compliance with the CDC Mask Order, including:
  1. Enforcement actions authorized by 49 U.S.C. § 5329(g);
  2. Referring the Recipient to the CDC or other Federal authority for enforcement action;
  3. Enforcement actions authorized by 2 CFR §§ 200.339 – 340; and
  4. Any other enforcement action authorized by Federal law or regulation.

## **46. ADA ACCESS**

The Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments hereto.

The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party contractors must comply with their responsibilities under Titles I thru V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies. The following clauses should be included for the appropriate procurement action.

- A. Rolling Stock Accessibility: Rolling stock must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Vehicles acquired (with limited exceptions) should be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;
- B. Purchased Transportation Services Accessibility. A third party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 et seq. and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. MART advises its third party contractors operating public transportation services to review the requirements for public entities in this context which include but are not limited to:
  - 1. Complementary Paratransit Service. Requirements that public entities providing fixed-route service provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service.
  - 2. Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services
- C. Design and Construction Accessibility. Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 et seq. and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB's "Americans with Disabilities

Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

## CERTIFICATE OF NONDEBARMENT / SUSPENSION

- To be completed by the Prime Contractor of this bid and any Subcontractors that will be affiliated with the work in this bid.
- Return the completed form with the original bid package.

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

The Lower Tier Participant (Applicant for a third party subcontract or subgrant under an FTA project), \_\_\_\_\_ hereinafter referred to as *Vendor*, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency.

Where the Vendor is unable to certify to any of the statements in this certification, such Vendor shall attach an explanation to this submittal.

**The Vendor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801 et seq. are applicable thereto.**

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Title of Authorized Official

\_\_\_\_\_  
Date

**THIS FORM SHALL BE COMPLETED BY THE PRIME CONTRACTOR AND ANY SUBCONTRACTORS THAT WILL BE AFFILIATED WITH THE WORK IN THIS BID. RETURN ALL COMPLETED FORMS WITH ORIGINAL BID PACKAGE.**

## CERTIFICATION REGARDING LOBBYING BY CONTRACTOR (FTA)

Pursuant to 40 CFR Part 20 (which is by this reference incorporated herein), the undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL *Disclosure Form to Report Lobbying*, in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.



# DISCLOSURE OF LOBBYING ACTIVITIES (FTA)

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See next page for instructions.)

0348-0046

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <div style="display: flex; justify-content: space-between;"> <span>Prime</span> <span>Subawardee</span> </div> Tier _____, <i>if known</i> :  Congressional District, <i>if known</i> : 4c		<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>   Congressional District, <i>if known</i> :
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, <i>if applicable</i> :	
<b>8. Federal Action Number, <i>if known</i>:</b>	<b>9. Award Amount, <i>if known</i>:</b> \$	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.












# 2023-093 Everett Station HVAC Design\_SD

Final Audit Report

2024-02-15

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By:	Marista Jorve (mjorve@everettwa.gov)
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