



Whatcom
Transportation
Authority

4011 Bakerview Spur
Bellingham, WA 98226
procurement@ridewta.com 360-676-6843

CHANGED PURCHASE ORDER

By performing work or providing goods, VENDOR acknowledges and agrees to the Terms & Conditions accompanying this PO. If T&C are missing, contact Procurement

PO Number	2022408
Order Date	7/26/2022
Vendor Number	BURCON

VENDOR:

BURTON CONSTRUCTION, INC.
3915 E NEBRASKA AVE

SPOKANE, WA 99217

BILL TO / SHIP TO:

Whatcom Transportation Authority
4011 Bakerview Spur
Bellingham, WA 98226

INVOICES TO: AP@RIDEWTA.COM

VENDOR CONTACT:

Evan Benjamin
ebenjamin@burtonconstruction.net
206-573-8626

WTA REQUESTOR	DEPARTMENT	SHIP VIA	FOB	TERMS
Devon deBoer	Facilities	Best Way / Prepaid & Add	DESTINATION	Net 30 Days

VENDOR QUOTE: **WTA22003**

WTA CONTRACT #: **2021-265PB**

PIGGYBACK CONTRACT: **Port of Everett AD-GN-2021-01**

This purchase is made using FTA or WSDOT funding. Special terms and conditions apply. Please contact procurement if terms and conditions are missing

Pursuant to RCW 39.12.040, CONTRACTOR must file an intent to pay prevailing wage with Washington State Labor & Industries. An affidavit of wages paid is required for final payment.

Pursuant to RCW 60.28.011 retainage will apply to this order.

Item Description	GL Account Number	Department Number	Project Code	Quantity	Unit Price	Total With Tax	Line Item Notes
CAPITAL EXPENSE	66406	99	11	1.00	202,703.28	202,703.28	Includes fees & WSST. Rule 171 applies. 6.6.23 mw. Added \$44976.56 per CI request 653.
-	-	-	-	-	202,703.28	202,703.28	-

Original PO Amount	\$157,726.72
Change Orders Through 6/6/2023	\$
This Change Order Amount	\$
NEW PO TOTAL	\$202,703.28

Invoices Paid Through 6/6/2023	\$0.00
---------------------------------------	---------------

Magan Waltari, Purchasing & Contracts Manager

Job Order Authorization**Job Order Contract**

Date:	06/01/2023	
Project Information	Job Order #:	WTA22003.01
	Department/Division:	
	Job Order Title:	Midway Lot Bus Charger Federal
	Location Name:	Midway Lot
	Brief Scope of Work:	Manufacturer of our prepurchased material changed design and engineering requirements, therefore scope of work changed.
Contract Information	Contract:	AD-GN-2021-01
	Contractor:	Burton Construction Inc 3915 E. Nebraska Ave Spokane, WA 99217
Project Costs	Construction	\$44,976.56
	Construction Sales Tax %	\$0.00
	Gordian Licensing 1.95%	\$877.04
	Sales Tax on License Fee %	\$0.00
	Gordian Fee 3.05%	\$1,371.79
	Total:	\$47,225.39
Schedule	Project Duration:	
	Start Date (Planned):	
	Completion Date (Planned):	

Sign below to approve this Job Order

Final Scope of Work

Date: 6/1/2023

Job Order Contracting

To: Mike Bozzo
Whatcom Transit Authority
4011 Bakerview Spur
Bellingham, WA 98226
(360) 303-8291
mikeb@ridewta.com

From: Evan Benjamin
Burton Construction Inc
3915 E. Nebraska Ave
Spokane, WA 99217
(509) 468-4932
ebenjamin@burtonconstruction.net

Contract No: AD-GN-2021-01
Job Order No: WTA22003.01
Job Order Title: Midway Lot Bus Charger Federal
Location: Midway Lot
4011 Bakerview Spur
Bellingham, WA 98226

Brief Scope of Work: Manufacturer of our prepurchased material changed design and engineering requirements, therefore scope of work changed.

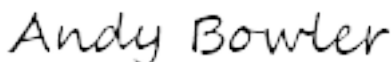
The following items detail the scope of work as discussed at the site. All requirements necessary to accomplish the items set forth below shall be considered part of this scope of work.



Signed: Tuesday, June 6, 2023
Evan Benjamin, Contractor Project Manager

06/06/2023

Date



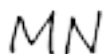
Signed: Monday, June 5, 2023
Andy Bowler, WTA Project Sponsor

06/05/2023

Date



Signed: Monday, June 5, 2023



06/05/2023

Signed: Monday, June 5, 2023

Price Proposal Detail Package Report

Version: 2.0

Approved 06/01/2023 04:11:41 PM EST

Date: June 1, 2023
JOC Name (Contractor): Burton Construction Inc
Contract Name: (ILA) Port of Everett 2021
Contract Number: AD-GN-2021-01
Job Order Number: WTA22003.01
Job Order Title: Midway Lot Bus Charger Federal
Location: Midway Lot
Cost Proposal Date: June 1, 2023
Proposal Value: \$44,976.56

Division		Division Totals
01	General Requirements	\$2,308.17
02	Existing Conditions	\$913.94
05	Metals	\$26,945.30
11	Equipment	\$8,342.94
26	Electrical	\$6,466.21
Proposal Total:		\$44,976.56
The Percentage of Non Pre-Priced on this Proposal:		0.0%

By signing the Contractor acknowledges that this Job Order is issued under the provisions of the Contract established in response to Contract #AD-GN-2021-01 by . The services authorized are within the scope of services set forth in the Contract. All rights and obligations of the parties shall be subject to and governed by the terms and conditions, amendment(s) (if applicable), and the signed contract including any subsequent modifications, are hereby incorporated by reference as if fully set forth herein.

Devon deBoer

Signed: Monday, June 5, 2023
Devon deBoer, WTA Project Manager

06/05/2023

Date

Andy Bowler

Signed: Monday, June 5, 2023
Project Sponsor

06/05/2023

Date

Les Reardanz

Signed: Monday, June 5, 2023
Les Reardanz, General Manager

06/05/2023

Date

Washington State Sales Tax (0):

\$0.00

Total Price of Construction Including WSST:

\$44,976.56

Price Proposal Detail Package Report

Version: 2.0

Approved 06/01/2023 04:11:41 PM EST

Date: June 1, 2023
JOC Name (Contractor): Burton Construction Inc
Contract Name: (ILA) Port of Everett 2021
Contract Number: AD-GN-2021-01
Job Order Number WTA22003.01
Job Order Title Midway Lot Bus Charger Federal
Location: Midway Lot
Cost Proposal Date: June 1, 2023
Proposal Value: \$44,976.56

Record #	CSI Number	MOD	UOM	Description	Unit Price	Factor	Total
01 - General Requirements							\$2,308.17
1	012220000056		HR	Engineer			
	Accepted						
				Quantity	x	Unit Price	x
				Factor	=	LineTotal	
		Installation	HR	8.00	x	\$129.03	x
						1.2300	=
							\$1,269.66
							\$1,269.66
User Note: Design based on wind loading, east-west, north-south, •Design connection of unit to 4x4 angle, •Analyze twisting of 4x4 angle at the connection points and at the B230 connection, •Check B230 connection, bolts, •Design anchor to concrete with minimum concrete requirement, •Prepare a stamped set of drawing, details and calculations.							
2	017113000002		EA	Equipment Delivery, Pickup, Mobilization And Demobilization Using A Rollback Flatbed Truck			
	Accepted						
				Quantity	x	Unit Price	x
				Factor	=	LineTotal	
		Installation	EA	4.00	x	\$211.08	x
						1.2300	=
							\$1,038.51
							\$1,038.51
User Note: Mobilization of custom charger bases to galvanizing facility and to the site (2x2 mobes) 4 ea							
02 - Existing Conditions							\$913.94
3	024119130196		IN	1" Diameter Drilling In Concrete Per Inch Of Depth			
	Accepted						
				Quantity	x	Unit Price	x
				Factor	=	LineTotal	
		Installation	IN	288.00	x	\$2.58	x
						1.2300	=
							\$913.94
							\$913.94
User Note: 6" depth x 4 ea base x 12 ea bases = 288in depth							
05 - Metals							\$26,945.30

Price Proposal Detail Package Report

Version: 2.0

Approved 06/01/2023 04:11:41 PM EST

4	050521000006	EA	>15 Spot Weldings, Welds Up To 1" Length Each							
	Accepted			Quantity	x	Unit Price	x	Factor	=	LineTotal
		Installation	EA	320.00	x	\$7.74	x	1.2300	=	\$3,046.46
										\$3,046.46

User Note: Welds for custom bases 20 each base at 16 ea

5	050523000010	EA	3/4" Diameter x 6" Long, Plain Finish A307B Heavy Hex Bolt							
	Accepted			Quantity	x	Unit Price	x	Factor	=	LineTotal
		Installation	EA	48.00	x	\$23.97	x	1.2300	=	\$1,415.19
										\$1,415.19

User Note: 4 each base x 12 bases = 48ea

6	050523001570	EA	>7/8" To 1-1/2" Diameter Drill Through Up To 1/4" Steel Plate							
	Accepted			Quantity	x	Unit Price	x	Factor	=	LineTotal
		Installation	EA	48.00	x	\$22.45	x	1.2300	=	\$1,325.45
										\$1,325.45

User Note: 4 ea base x 12 bases = 48ea

7	051223000052	TON	Column Base Plates, Up To 150 LB Each, A36 Miscellaneous Steel Items							
	Accepted			Quantity	x	Unit Price	x	Factor	=	LineTotal
		Installation	TON	3.00	x	\$4,609.58	x	1.2300	=	\$17,009.35
										\$17,009.35

User Note: Best fit for Fabricated, Galvanize, install 12 EA Custom Charger bases

8	051223000052	0003	TON	For Hot Dip Galvanizing, Add						
	Accepted			Quantity	x	Unit Price	x	Factor	=	LineTotal
		Installation	TON	3.00	x	\$1,124.35	x	1.2300	=	\$4,148.85
										\$4,148.85

User Note:

11 - Equipment **\$8,342.94**

9	111136130014	EA	Single Pedestal Mount Electric Vehicle Charging Station (AeroVironment TurboDock Pedestal)							
	Accepted			Quantity	x	Unit Price	x	Factor	=	LineTotal
		Installation	EA	12.00	x	\$452.19	x	1.2300	=	\$6,674.32
		Demo	EA	12.000000	x	\$113.05	x	1.2300	=	\$1,668.62
										\$8,342.94

User Note: Labor and equipment to remove power block to install custom charger bases 12 ea.
(Material removed)

Price Proposal Detail Package Report

Version: 2.0

Approved 06/01/2023 04:11:41 PM EST

26 - Electrical \$6,466.21

10	260533130070	LF	4" Rigid Galvanized Steel (RGS) Conduit With Threaded Coupling						
	<i>Accepted</i>		Quantity	x	Unit Price	x	Factor	=	LineTotal
		Installation	100.00	x	\$44.59	x	1.2300	=	\$5,484.57
									\$5,484.57

User Note: 4" GRS Conduit surface installation to power blocks

11	260533130083	EA	4" Rigid Galvanized Steel (RGS) 90 Degree Standard Radius Elbow						
	<i>Accepted</i>		Quantity	x	Unit Price	x	Factor	=	LineTotal
		Installation	4.00	x	\$199.52	x	1.2300	=	\$981.64
									\$981.64

User Note: 4 90deg elbows for conduit install to power blocks

Proposal Total: \$44,976.56

The Percentage of Non Pre-Priced on this Proposal: 0.0%

This proposal total represents the correct total for the proposal. Any discrepancy between line totals, sub-totals and the proposal total is due to rounding of the line totals and sub-totals.

CHANGED PURCHASE ORDER

Purchase Order (PO) Terms and Conditions

This Purchase Order Terms and Conditions (PO) sets out the terms and conditions applicable to any competitively sourced contract, Assurance and/or Quotation provided by the vendor as a result of specifications or plans provided by Whatcom Transportation Authority (WTA). The PO incorporates herein by reference, published applicable rules and regulations of WTA, The Federal Transit Administration (FTA) and the laws of the State of Washington. Current Terms and Conditions are available at www.ridewta.com.

DEFINITIONS: The term PURCHASER refers to and means WTA by and through its Procurement Department or authorized designee.

The term VENDOR is the recipient of this PO, and who holds itself/himself or herself out as the supplier of the goods or services sought by WTA.

The term WRITING includes any and all written forms of communication, including, but not limited to, e-mails.

1. **COMPLIANCE WITH APPLICABLE LAWS:** In providing serves or good to WTA, Vendor shall comply with all applicable federal, state, and local laws and regulations.
2. **CHANGES:** Changes in any of the terms, conditions, delivery, price, quality, quantities, or specifications of this purchase order (PO) will be effective only in writing.
3. **MSDS:** Material Safety Data Sheets are to be included with shipments of any applicable material requiring this documentation, per OSHA and WISHA regulations.
4. **HANDLING:** Charges for handling will be allowed only if previously agreed to in the parties' underlying agreement.
5. **SHIPPING INSTRUCTIONS:** Goods are to be shipped prepaid-add/bill, FOB DESTINATION unless otherwise specified or agreed to by the parties in writing. Vendor agrees to prepay all shipping charges and invoice WTA accordingly. Shipments are to be routed by the most economical common carrier, unless otherwise instructed by WTA. WTA reserves the right to refuse COD shipments.
6. **DELIVERY:** Deliveries shall be made Monday thru Friday (except WTA recognized holidays), from 8 AM to noon and 1 PM to 5 PM, unless otherwise scheduled with WTA staff. All deliveries must be signed for by WTA. WTA may refuse payment of invoices received without a signature to verify proof of delivery.
7. **REJECTION:** Goods or materials received are subject to inspection and approval by WTA within five (5) business days. Any rejection of goods or material resulting because of nonconformity to the order's terms and specifications, or latent defects discovered after delivery, will be at Vendor's risk and expense, including any shipping costs.
8. **IDENTIFICATION:** The PO number shall be listed on all invoices, packing lists, packages, shipping notices, and other documents related to this order. Packing lists and/or invoice copies must accompany delivered goods and show quantities shipped, quantities backordered, and unit pricing.
9. **TAXES:** WTA agrees to pay all State of Washington sales or use tax unless otherwise agreed upon or subject to an exemption. Vendor shall separately list such taxes on all invoices. WTA will not pay Federal Excise Tax.
10. **PAYMENT:** Standard terms of payment are net thirty (30) days from WTA's receipt of invoice. Invoices will be processed for payment only after goods or services are received. WTA reserves the right to refuse payment on invoices for work performed or goods received that completed sixty (60) days prior to the invoice receipt.
11. **WARRANTIES:** Vendor represents and warrants that the goods are new, current, and fully warranted by the manufacturer unless specifically identified otherwise; that all goods comply with applicable specifications; and are free from defects in labor, material and manufacture. Vendor represents and warrants that all UCC implied and expressed warranties are incorporated in this PO and applicable to the goods. Vendor shall transfer all warranties to WTA that are provided by third parties in association with any goods.
12. **LIENS, CLAIMS, AND ENCUMBRANCES:** Vendor warrants and represents that all the goods and materials ordered herein are free and clear of all liens, claims, or encumbrances of any kind.
13. **HOLD HARMLESS:** Vendor shall indemnify, defend and hold harmless WTA and its officers, employees, and agents, from all claims, suits or actions of any nature arising out of or related to the activities of Vendor, its officers, subcontractors, agents or employees under this PO/contract, or the goods or services provided by Vendor.
14. **TERMINATION:**
 - a. The parties may terminate this PO by mutual agreement.
 - b. WTA may terminate this PO at any time and for any reason, including for cause or based upon WTA's discretion, by providing written notice to Vendor. Upon receipt of the written notice, Vendor shall stop performance and invoice WTA within thirty (30) days for any good or service provided and accepted prior to the termination.
 - c. If Vendor breaches any PO provision or is declared insolvent, WTA may terminate this PO for cause with three (3) days written notice to Vendor, without any opportunity to cure. Vendor shall be liable for all incidental and consequential damages resulting from its/his/her breach, including all damages as provided in the Uniform Commercial Code.
15. **GIFTS AND GRATUITIES:** WTA employees and Board members may not receive, accept, take or seek gifts from Vendors. No person may directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic or personal value in conjunction with WTA purchasing business practices.
16. **AVAILABILITY OF RECORDS FOR PUBLIC INSPECTION:** All records, books, accounts, and reports relating to the PO and associated goods and services provided by Vendor are subject to Public Disclosure under RCW Chapter 42.56.

Federally Required Terms & Conditions**1. No Obligation by the Federal Government.**

(1) The Purchaser (herein WTA) and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to WTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. Program Fraud and False or Fraudulent Statements or Related Acts.

(1) 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.

(2) 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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) 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.

3. Access to Records

1. Where WTA is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide WTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where WTA enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide WTA, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where WTA is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until WTA, the FTA Administrator, the Comptroller General, or any of their duly authorized

representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

4. Federal Changes

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 Master Agreement between WTA and FTA, 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.

5. Termination

Convenience WTA may terminate all or part of this Contract by providing written notice, when in WTA's best interest. In such case, Contractor shall deliver to WTA any goods and/or work completed, and equipment or property of WTA. Contractor will invoice WTA for services provided prior to termination, or goods accepted by WTA, within thirty (30) days of receiving notice of termination for convenience and shall be entitled to the Contract price for such accepted services or accepted goods. WTA reserves the right not to pay invoices submitted past thirty (30) calendar days.

Notice of Breach of Contract: The parties will immediately notify one another in writing once the notifying party becomes aware of any breach of this Contract, or commission of an error or omission. Any work done by Contractor after such discovery and before an acceptable remedy has been bilaterally agreed on and documented as a Change Order as outlined above will be done at the Contractor's risk and with no obligation by WTA to pay for any services or products provided.

Opportunity to Cure: Where Contractor has breached this Contract, WTA may, in its sole discretion, allow Contractor up to thirty (30) calendar days to cure the breach, unless another timeframe is otherwise negotiated and agreed on between the Parties. In such case, WTA will detail in writing what the Contractor must do to remedy the breach and the timeframe to complete the remedy.

Default: If Contractor breaches any term of the Contract and fails to cure such breach within any cure period that WTA may allow, WTA may terminate this Contract for default by providing three (3) days written notice to Contractor. Contractor may invoice WTA for goods and services provided and accepted by WTA prior to termination at the Contracted price. WTA reserves the right not to pay invoices submitted past thirty (30) days. In addition to the right to terminate, WTA may seek and recover any other available remedies allowed by law against Contractor and its sureties caused by default. These remedies include procurement of replacement goods or services from another provider, attorneys' fees, and/or recovery of its damages, attorneys' fees and costs from Contractor or other administration costs as necessary.

If WTA later determines that there was an excusable reason for Contractor's breach, it may in its discretion allow Contractor to continue work under a new performance schedule or terminate for convenience.

6. Civil Rights & EEO for Construction

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sexual orientation, gender identity, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the 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. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The 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, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the 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.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the



requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(4) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(5) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(7) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(8) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(9) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or

purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(10) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

7. Disadvantaged Business Enterprises

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 DBE participation is 10%. WTA's overall goal for DBE participation is 1%. A separate contract goal has not been established for this procurement.

A DBE must be certified by the Washington State Office of Minority and Women's Business Enterprises. www.omwbe.wa.gov or other Federally recognized UCP. DBE firms shall have equal opportunity to compete for and perform as prime contractors, suppliers, or as subcontractors through another awarded contractor.

- A. DBE and Small Business Enterprise (SBE) outreach and use is required for this contract. Proposers are required to make good faith efforts in recruiting DBE's and SBE's in the preparation of their bids. Examples of good faith efforts to be demonstrated and documented by the prime contractor include the following:
1. Attendance at any pre-solicitation or pre-bid meetings that were scheduled by COTA to inform DBEs of contracting and subcontracting opportunities
 2. Advertisement in general circulation, trade association and minority-focused media concerning the sub-contracting opportunities
 3. Provision of written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBE to participate effectively (and documenting the contact)
 4. Follow-up of initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested
 5. Provision to interested DBEs of adequate information about the plans, specifications and requirements of the contract (and maintaining record of such contract)

6. Negotiation in good faith with interested DBEs not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities (and be able to document any “unqualified”)
7. Soliciting the aid of available minority community organizations; minority contractors’ groups, local, state and federal minority business assistance officers; and other organizations that provide assistance in the recruitment and placement of DBEs (and be able to furnish records of such solicitation)

Contractor Requirements

1. Reporting Requirements: The Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of contract performance. This report will include, the business name and address, amount of the sub-contract, amount and date of payments.
2. Proposers are required to document all good faith efforts at utilizing DBE’s and SBE’s (Outreach & Participation Schedule). Good faith efforts will be maintained and available upon request. A separate DBE Unavailability Certification is required for each DBE contractor contacted but unable to participate in the project.
3. Proposers will submit, with their proposal, a Determination of Good Faith Effort. Failure to include the determination will be cause for proposal rejection.
4. A Statement of Intent is required from all DBE’s that will be subcontracted work on this contract
5. The successful contractor will be required to submit a Prompt Payment Certification (provided to awarded contractor) and supporting documentation with each Progress Payment. WTA’s Procurement & Grants Coordinator reserves the right to interview subcontractors to verify the information submitted on the Certification.
6. **Prompt Payment:** The prime contractor agrees to pay each subcontractor, if applicable, under this prime contract for the satisfactory performance of its contract no later than ten (10) days¹ from the receipt of each payment the prime contractor receives from WTA. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of WTA. This clause applies to both DBE and non-DBE sub-contractors. With each Request for Payment, Contractor will submit Exhibit K – Prompt Payment Certification as a condition of payment.
7. **Retainage:** The prime contractor agrees to return retainage payments to each subcontractor within sixty (60) days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time

¹ RCW 39.04.250

frame may occur only for good cause following written approval of WTA. This clause applies to both DBE and non-DBE subcontracts.

8. **Monitoring and Enforcement:** The prime contractor shall notify WTA Procurement & Contracts Coordinator/DBELO in writing of any delay or postponement of payment beyond thirty (30) days and such written notification shall set forth, with appropriate documentation, the full details of the reasons upon which the prime contractor is basing its actions. WTA shall not be obligated to make a progress payment or final payment to a prime contractor who has failed to make payments promptly to its subcontractors, and for which WTA has made payment, without good cause. The remedies WTA has available to enforce the DBE requirements contained in its contracts include, but are not limited to, the following:
- a. Breach of contract action pursuant to the terms of the contract. The intent of proceeding will be to initiate corrective action on the part of the contractor. If the corrective action is not implemented, the contractor will be terminated in accordance with the terms of the contract.
 - b. Inform the Washington Department of Transportation and FTA of any false, fraudulent, or dishonest conduct regard the DBE Program. Beyond the power of WTA within the contract terms, the Federal government has available the following mechanisms that apply to firms participating in the DBE program:
 - 1) Suspension or debarment proceedings pursuant to 49 CFR Part 26.
 - 2) Enforcement action pursuant to 49 CFR Part 31.

The Contractor will promptly notify WTA's Procurement & Contracts Coordinator/DBELO whenever a subcontractor performing work related to this contract is terminated or fails to complete its work. The contractor 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 WTA.

8. Incorporation of Federal Transit Administration (FTA) Terms

The preceding 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 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any WTA requests which would cause WTA to be in violation of the FTA terms and conditions.

9. Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.



The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

10. Buy America

By signing and submitting its bid, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by WTA. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to WTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while this contract is valid and throughout the period of performance. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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 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, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A Contractor must submit to the FTA recipient the appropriate Buy America certification with all contracts on FTA-funded contracts, except those subject to a general waiver. Contracts that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) **Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Contractor certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) **Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

11. Disputes

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of WTA's General Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. 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 General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

If the parties do not resolve a dispute through initial negotiations, then the matter should be resolved by a mutually agreed-to alternative dispute resolution process. This can include structured negotiations, mediation, or arbitration.

a. Performance During Dispute

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

b. 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 of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

c. Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between WTA 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 the State of Washington.

d. 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 WTA 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.

12. 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 WTA,

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 shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

13. Clean Air

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the

Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

14. Clean Water

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA

15. Cargo Preference/Ship America

Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

16. Fly America Requirements



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.

17. Davis Bacon & 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.

18. Contract Work Hours & Safety Standards

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

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 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 the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee) 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 the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of 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 paragraphs (1) through (4) of this section.

19. Bonding

The Contractor and all sub contractors shall provide separate executed Payment and Performance Bonds for the full Contract amount that fully satisfies all requirements of RCW 39.08. Both Bonds shall:

1. Be on a WTA-furnished form
2. Be signed by an approved Surety (or Sureties) that:
3. Is registered with the Washington State Insurance Commissioner;
4. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner; and
5. The surety or co-sureties should be listed as acceptable surety on federal bonds by the US Department of Treasury,
6. Be conditioned upon the faithful performance of the Contract by the Contractor within the prescribed time
7. Guarantee that the Surety shall hold harmless, indemnify, defend, and protect WTA against any claim of direct or indirect loss resulting from:
8. The failure of the Contractor (or any of the employees, Subcontractors, or lower tier subcontractors of the Contractor) to faithfully perform the Contract
9. The failure of the Contractor (or the Subcontractors or lower tier subcontractors of the Contractor) to pay all laborers, mechanics, Subcontractors, lower tier subcontractors, material, person, or any other person who provides supplies or provisions for carrying out the Work.
10. Any claims, demands, suit, judgment or actions arising out of Contractor's acts or performance of this Contract, or the acts of any Subcontractor of Contractor.
11. For any liens that may be asserted arising out of or relating to the Contract.



WTA may require Sureties or Surety companies on the Contract Bond to appear and qualify themselves. Whenever the Contracting Agency deems the Surety or Sureties to be inadequate, it may, upon written demand, require the Contractor to furnish additional Surety to cover any remaining Work. Until the added Surety is furnished, payments on the Contract will stop.

20. Seismic Safety

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.

21. Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

22. Recovered/Recycled Materials

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

23. ADA Access

Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and



agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- 1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- 2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- 3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- 4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- 5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- 6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- 7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- 8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- 9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- 10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- 11) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

24. Solid Wastes.

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 C.F.R. 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.

25. Safe Operation of Motor Vehicles

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 AGENCY.

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.

26. Trafficking in Persons

Contractor agrees that it and its employees that participate in the WTA’s Contract Award, may not:

- Engage in severe forms of trafficking in persons during the contract period including all extensions or while WTA’s Federal Award is in effect,
- Procure a commercial sex act during the contract period including all extensions or while WTA’s Federal Award is in effect, or
- Use forced labor in the performance of WTA’s contract or any sub agreements thereunder.

27. Notification of Legal Matters

Contractor agrees to notify WTA 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, 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. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or where the Federal Government may be named as a party to litigation or a legal disagreement in any forum for any reason.

Contractor will immediately notify WTA 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 Recipient.

WTA 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.

28. Environmental Justice

Contractor 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.

29. Veterans Preference

As provided in 49 U.S.C. § 5325(k), to the extent practicable, WTA agrees and assures that each of its Contractors:

- 1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform 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. chapter 53; and
- 2) Will not 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.

30. Historic Preservation

- (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.



**Whatcom
Transportation
Authority**

Federal Terms & Conditions

Burton Construction – JOC

- (5) Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
- (6) 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).