Everett City Council Agenda
12:30 P.M. October 26, 2016
City Council Chambers

Pledge of Allegiance

Roll Call

Approval of Minutes: October 19, 2016

Mayor's Comments - 2017 Mayors Budget Address

Council Comments/Liaison Reports

Administration Update on prior business

City Attorney

Citizen Comments

COUNCIL BRIEFING AGENDA: (These items come before the City Council serving as a Council Committee of the Whole and are likely to be scheduled at a future meeting.)

(1) Briefing on a potential amendment to the Zoning Code to allow detached accessory dwelling units in single family zones.

Documents:

detached accessory dwellings.pdf

(2) Authorize the Mayor to sign the Interlocal Agreement with Community Transit for the SWIFT II BRT project.

Documents:

SWIFT BRT PROJECT.pdf

PROPOSED ACTION ITEMS:

(3) CB 1610-43 -2nd Reading – Adopt the Proposed Ordinance authorizing the issuance of Water and Sewer Revenue bonds in the principal amount not to exceed $82,500,000 for the purpose of refunding certain outstanding revenue bonds of the City. (3rd and final reading on 11-2-16).

Documents:

CB 1610-43.pdf

(4) CB 1610-44 – 1st Reading – Adopt the Proposed Ordinance closing a Special Improvement Project entitled "North Everett Pedestrian and Bicycle Safety" Fund 303 Program 093 as established by Ordinance No. 3243-11 (3rd and final reading on 11-9-16)

Documents:

CB 1610-44.pdf

CONSENT ITEMS:

(5) Adopt Resolution No. ____ authorizing claims against the City of Everett in the amount of $1,180,741.57 for the period of October 8, 2016 through

Documents:

res-108.pdf

(6) Adopt Resolution No. ____ authorizing electronic transfer claims against the City of Everett in the amount of $6,366,762.39 for the period of September 1, 2016 through September 30, 2016.

Documents:

CB1610-44.pdf

(7) Authorize Call for Bids for the Citywide Intersection Signing Project.

Documents:

Intersection Signing.pdf

PUBLIC HEARING:

(8) Adopt Resolution naming the proposed Riverfront Park in the Riverfront Redevelopment Project "Eclipse Mill Park".

Documents:

Eclipse Mill Park.pdf

ACTION ITEMS:

(9) Accept the donation of artwork done by a local artist to the Everett Municipal Art Collection from Diane Wright and Greg Nordholm

Documents:

Diane Wright.pdf

(10) Approve the use of the 1% for Art Funds to repair and restore artwork in the City's Municipal Art Collection not to exceed $50,000.00

Documents:

Arts.pdf

(11) Grant Final Approval for the Towns at Riverfront.

Documents:

Towns at Riverfront-1.pdf

(12) Authorize the Mayor to sign a Wholesale Water Delivery Contract for 2016-2066 with the Tulalip Tribes.

Documents:

Tulalips.pdf

(13) Authorize the Mayor to sign Change Order No. 1 with Seahurst Electronic, Inc. for the Water Filtration Plant Programmed Logic Controllers Replacement Project in the additional amount of $299,512.32 including Washington State sales tax.

Documents:

Logic Controllers.pdf

PUBLIC HEARING: 1st Budget Hearing - The public is encouraged to attend.

Executive Session

Adjourn

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at 425 257-8703.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Briefing on a potential amendment to the Zoning Code to allow detached accessory dwelling units in single family zones

10-26-16	Briefing	
	Proposed Action	
	Consent	
	Action	
	First Reading	
	Second Reading	
	Third Reading	
	Public Hearing	

COUNCIL BILL #	
Originating Department	Planning
Contact Person	Allan Giffen
Phone Number	(425) 257-8725
FOR AGENDA OF	October 26, 2016

Initialed by:

Department Head db

CAA

Council President AM

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
	Planning Commission initiated July 19, 2016		Planning

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The Planning Commission agreed to initiate consideration of a potential amendment to the Zoning Code to allow detached accessory dwelling units (DADU's) in single family zones. The request was made by a citizen.

An accessory dwelling unit is a smaller, secondary dwelling located on the same lot as a principal dwelling. The code currently allows only accessory dwellings that are attached to the principal dwelling, except in limited circumstances in Historic Overlay Zones. The requested code amendment, if approved, would allow dwellings that are not attached to the principal dwelling in single family zones.

This staff briefing is intended to provide City Council with more information about DADU's and to get feedback about any concerns that the City Council may have so the Planning Commission can consider those concerns as part of their process.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Interlocal Agreement with Community Transit for the Swift II BRT Project

____	Briefing
____	Proposed Action
____	Consent
____	Action
____	First Reading
____	Second Reading
____	Third Reading
____	Public Hearing
____	Budget Advisory

COUNCIL BILL #	
Originating Department	Public Works
Contact Person	Ryan Sass
Phone Number	(425) 257-8942
FOR AGENDA OF	October 26, 2016

Initialed by:
Department Head
CAA
Council President

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
Airport Road		Proposed Interlocal Agreement with 2 Attachments	Public Works

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
Community Transit is in the final stages of securing funding for the Swift II BRT Project. The project will provide a high capacity transit system between the Boeing/Paine Field manufacturing center and the Canyon Park high tech job center and provide the benefits of greater capacity and increased levels of service.

As a condition of award of the funding, the Federal Transit Administration (FTA) requires Community Transit to have an agreement in place with the City to assure continued maintenance of the improvements within the public right of way funded by FTA. A list of the locations is provided in Attachment A.

RECOMMENDATION (Exact action requested of Council):
Authorize the Mayor to sign the Interlocal Agreement with Community Transit for the Swift II BRT Project.

communitytransit

Emmett Heath, Chief Executive Officer

September 6, 2016

Mayor Ray Stephanson
City of Everett
2930 Wetmore Ave
Everett, WA 98201

Subject: Interlocal Agreement, Community Transit Swift II BRT Project

Mayor Stephanson,

Community Transit is in the advanced stages of development for the Swift II BRT project, to provide high capacity transit between the Boeing/Paine Field manufacturing center and the Canyon Park high tech job center. Everett is an important partner in this project, as Swift II will provide significant multimodal capacity on Airport Road in the City and a much higher level of transit service to the Boeing/Paine Field Manufacturing and Industrial Center.

Swift II BRT has been successfully rated by the Federal Transit Administration (FTA) as eligible for Small Starts capital funding to construct the project. Community Transit is working toward final negotiation of a Small Starts Grant Agreement with FTA. A prerequisite to completion of the Small Starts process is securing Agreement from Everett providing assurance of continuing control and maintenance of properties and improvements funded by FTA.

Required points of Agreement between Community Transit and Everett for the Swift II BRT Project are:

1. Community Transit will acquire ROW for and complete construction of Swift II BRT Project corridor stations and associated intersection, lane, pedestrian, signal and storm water improvements along Airport Road (Attachment A).
2. Upon completion of Swift II BRT Project construction, Community Transit will transfer ownership of said ROW and roadway improvements to Everett.
3. Community Transit will operate and maintain Swift II BRT service and stations.
4. Everett will assume ownership and ongoing maintenance of said ROW and roadway improvements.

5. Everett agrees to maintain continuing control of the use of these federally assisted properties and constructed improvements to the extent satisfactory to FTA as described in FTA Circular 5010.1E Award Management Requirements (Attachment B). Chiefly, Everett agrees to provide the legal assurance that project property will remain available to be used for its originally authorized purpose throughout its useful life or until disposition.

Agreed to this _____ day of _____, 2016.

Community Transit:	City of Everett:
Joy Munkers Director of Planning & Development	Ray Stephanson Mayor

Attachments:

A. Swift II BRT Project Everett ROW & Improvement Locations
B. FTA Circular 5010.1E Award Management Requirements

Attachment A: Swift II BRT Project – Everett Ownership & FTA Continuing Control

This attachment summarizes Swift II BRT Project elements to be transferred to Everett ownership and requiring assurance to FTA of ongoing maintenance and continuing control.

Project elements to be owned and maintained by Everett include:

- Right-of-way
- Roadway, curb & gutter
- Sidewalk
- Traffic & Pedestrian Signals
- Stormwater systems

Location	Direction
Airport Rd at SR 99	Northbound
Airport Rd at 112th St SW	Southbound
Airport Rd at 112th St SW	Northbound
Airport Rd at Kasch Park Rd	Southbound
Airport Rd at Kasch Park Rd	Northbound

U.S. Department
of Transportation

Federal Transit Administration

PROPOSED CIRCULAR

FTA C 5010.1E

February 29, 2016

Subject: AWARD MANAGEMENT REQUIREMENTS

1. PURPOSE. This circular is a re-issuance of guidance (previously "Grant Management Requirements") for post-award administration and management activities for all applicable Federal Transit Administration (FTA) federal assistance programs. This revision incorporates provisions of the Fixing America's Surface Transportation Act (FAST or FAST Act) programs and the Moving Ahead for Progress in the 21st Century Act (MAP-21) programs. This circular includes the most current guidance for the federal public transportation programs as of the date of publication.

   This circular revision also incorporates provisions of Department of Transportation (DOT) regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 1201. These regulations incorporate by reference the Office of Management and Budget (OMB), "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR part 200, which supersedes and streamlines the former OMB Circulars on Uniform Administrative Guidance, A-102, and A-110, former OMB Circulars on Cost Principles, A-21, A-87 and A-122, and former OMB Circulars addressing Single Audit issues, A-133 on Single Audit Act administration and A-50 on Single Audit Act follow-up. OMB's final guidance consolidates the guidance previously contained in the aforementioned documents into a streamlined format that aims to improve both clarity and accessibility. The DOT adopts this guidance, with a few DOT-specific provisions.

   The DOT regulations, 2 CFR part 1201, supersede and repeal the requirements of the former DOT Common Rules, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," former 49 CFR part 18 and "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non- Profit Organizations), former 49 CFR part 19.

   Grant Agreements and Cooperative Agreements awarded before December 26, 2014, however, shall continue to be subject to the former DOT Common Rules, 49 CFR parts 18 and 19, and OMB guidance in effect on the date FTA awarded federal assistance for such Grant or Cooperative Agreements.

   These requirements are intended to assist recipients in administering FTA-funded projects and in meeting the responsibilities and reporting requirements of FTA Awards. Recipients have a responsibility to comply with regulatory requirements and to be aware of all pertinent materials to assist in the management of their federally assisted Awards.

2. CANCELLATION. This circular cancels FTA Circular 5010.1D, "Grant Management Guidelines," dated 08-27-2012.

3. AUTHORITY.

   b. Federal Transit Laws, codified at 49 U.S.C. chapter 53.

   c. 49 CFR § 1.51.

4. WAIVER. FTA reserves the right to waive any provision of this circular to the extent permitted by federal law or regulation.

5. FEDERAL REGISTER NOTICE. In conjunction with publication of this circular, a *Federal Register* notice was published on February 29, 2016.

6. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to update this circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment without further notice and comment on this circular. FTA will post updates on our website: **www.fta.dot.gov**. The website allows the public to register for notification when FTA issues *Federal Register* notices or new guidance; visit the website and click on "sign up for e-mail updates."

7. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, telephone FTA's Administrative Services Help Desk, at 202–366–4865. Individuals with hearing impairments may contact the Federal Relay Service at 1–800–877–8339 for assistance with the call.

Therese McMillan
Acting Administrator

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CHAPTER I

INTRODUCTION AND BACKGROUND

1. THE FEDERAL TRANSIT ADMINISTRATION (FTA). FTA is one of ten operating administrations within the U.S. Department of Transportation (DOT). Headed by an administrator appointed by the President of the United States, FTA functions through a Washington, DC, headquarters office, ten regional offices, and five metropolitan offices that assist transit agencies in all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa and federally recognized Indian tribes.

   As defined in 49 U.S.C. § 5302, "public transportation," means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income. Public transportation does not include intercity passenger rail transportation provided by AMTRAK, intercity bus service, charter bus service, school bus service, sightseeing service, courtesy shuttle service for patrons of one or more specific establishments, intra-terminal or intra-facility shuttle services. The terms "transit" and "mass transportation" are used interchangeably with "public transportation."

   The Federal Government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of awards with hundreds of state and local transit providers, primarily through its ten regional offices. Recipients and subrecipients of federal assistance for these projects are responsible for managing their programs in accordance with federal requirements. FTA is responsible for ensuring that recipients and subrecipients follow federal statutory and administrative requirements.

2. AUTHORIZING LEGISLATION AND GUIDANCE. Most federal transit laws are codified in 49 U.S.C. chapter 53. Authorizing legislation is substantive legislation enacted by Congress that establishes or continues the legal operation of a federal program or agency. Congress typically amends FTA's authorizing legislation every four to six years. FTA's most recent authorizing legislation is the Fixing America's Surface Transportation (FAST) Act programs, Public Law 114-94, signed into law on December 4, 2015, with an effective date of October 1, 2015.

   The Moving Ahead for Progress in the 21st Century Act (MAP-21) authorized FTA programs for FY 2013 through FY 2015, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) authorized FTA programs from FY 2005 through FY 2012. Changes have been added to this circular to reflect FAST and MAP-21 changes to federal transit law and changes required by other laws that have become effective since the circular was last published in 2012.

The circular revision also incorporates provisions of the Office of Management and Budget, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," (referred to as the Super Circular or Uniform Guidance), 2 CFR part 200. The Super Circular, 2 CFR part 200, supersedes and streamlines the administrative and cost principles provisions of requirements from former OMB Circulars A-21, A-87, A-102, A-110, and A-122, administrative requirements. The Super Circular also supersedes former OMB Circulars A-89, pertaining to the Catalog of Federal Domestic Assistance, and former OMB Circulars A-133, which addressed the Single Audit Act, and A-50, which addressed Single Audit Act follow-up.

U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR part 1201, supersedes and replaces the requirements of the DOT Common Rule, former 49 CFR parts 18 and 19, except **that former 49 CFR parts 18 and 19 will continue to apply to Grant and Cooperative Agreements awarded before December 26, 2014, as in effect on the date of such Grant or Cooperative Agreements** (*See* information below for further clarity).

The final guidance consolidates the guidance previously contained in the aforementioned regulations and circulars into a streamlined format that aims to improve both the clarity and accessibility. DOT's Common Rule, 2 CFR part 1201, incorporates the OMB guidance by reference and makes that guidance part of the DOT regulation. The OMB final guidance is located in 2 CFR, part 200. Copies of 2 CFR part 200 and the former OMB Circulars that are superseded by this guidance are available on OMB's Web site at http://www.whitehouse.gov/omb/circulars_default/.

3. HOW TO CONTACT FTA. FTA's regional and metropolitan offices are responsible for the provision of financial assistance to FTA recipients and subrecipients and oversight of project implementation for most FTA programs. Certain programs are the responsibility of FTA headquarters. Inquiries should be directed to either the regional or metropolitan office responsible for the geographic area in which you are located. *See* Appendix I of this circular for additional information.

   Visit the FTA Web site (http://www.fta.dot.gov) or contact FTA Headquarters at the following address and phone number:

   Federal Transit Administration
   Office of Communication and Congressional Affairs
   1200 New Jersey Avenue SE.
   Room E56–205
   Washington, DC 20590
   Phone: 202-366-4043
   Fax: 202-366-3472

4. GRANTS.GOV. FTA posts all competitive federal assistance opportunities on Grants.gov. Grants.gov is the one website for information on all discretionary federal assistance

agreement opportunities. More information about Grants.gov is available at **http://www.grants.gov**.

5. DEFINITIONS AND ACRONYMS. All definitions in 49 U.S.C. § 5302 and 2 CFR part 200, Subpart A apply to this circular, as well as the following definitions and acronyms:

   a. Definitions.

   (1) Accrual Basis of Accounting: The accrual basis of accounting means the accounting method in which income is recorded when earned instead of when received, and expenses are recorded when incurred instead of when paid.

   (2) Acquisition Cost: Acquisition cost means the cost of the asset including the cost to prepare the asset for its intended use. The acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software include those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Other charges such as the cost of inspection, installation, transportation, taxes, duty or protective in-transit insurance should be treated in accordance with the applicant or recipient's regular accounting practices, as separate line items. The cost of items separately installed and removable from rolling stock, such as fareboxes and radios, is treated as a separate acquisition and not as part of the cost of the vehicle if not included in the procurement of rolling stock.

   (3) Activity Line Item (ALI): Activity Line Item means the detailed description narrative and dollar amount to more fully explain the scope of work of that activity. Every ALI is associated with a specific Scope Code; the relationship between scope codes and ALIs is outlined in FTA's "ALI Tree." A sufficient level of information must be provided for each ALI for FTA and the recipient to manage activities approved as part of the award.

   (4) Administrative Amendment: Administrative amendment means a minor change to an award initiated by FTA to modify or clarify certain terms, conditions, or provisions of a Grant or Cooperative Agreement.

   (5) Administrative Settlement: Administrative settlement means a settlement in which: (1) the purchase price for property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed, and (2) an authorized federal agency official approves such an arrangement. An administrative amendment must be reasonable, prudent, and in the public interest.

   (6) Advance Payment: Advance payment means a payment that a federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the recipient or subrecipient disburses the funds for program purposes.

(7) Air Rights: Air rights mean the space located above the surface of the ground, lying within a project's property limits.

(8) Allocation: Allocation means the process of assigning a cost, or a group of costs, to one or more cost objectives, in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning one or more costs directly to a final cost objective or through one or more intermediate cost objectives.

(9) Amendment: Amendment means the modification of a Grant or Cooperative Agreement that includes a change in scope of work and/or change in federal assistance, as approved by FTA.

(10) Applicant: In this circular, the term "applicant" is used to identify an entity that is seeking, but has not yet been awarded, specific federal assistance directly from FTA in the form of a Grant or Cooperative Agreement.

(11) Application: An application means a complete application submitted to FTA for an award of federal assistance to an eligible recipient in the form of money, or property in lieu of money, by the Federal Government through a Grant or Cooperative Agreement.

(12) Associated Transit Improvement: An associated transit improvement (formally referred to as "Transit Enhancements") means, with respect to any project or an area to be served by a project, projects that are designed to enhance public transportation service or use and that are physically or functionally related to transit facilities. Eligible projects are: (1) historic preservation, rehabilitation, and operation of historic public transportation buildings, structures, and facilities (including historic bus and railroad facilities) intended for use in public transportation service; (2) bus shelters; (3) functional landscaping and streetscaping, including benches, trash receptacles, and street lights; (4) pedestrian access and walkways; (5) bicycle access, including bicycle storage shelters and parking facilities and the installation of equipment for transporting bicycles on public transportation vehicles; (6) signage; or (7) enhanced access for persons with disabilities to public transportation. The FAST Act prohibits grants or loans to be used to pay incremental costs of incorporating art or non-functional landscaping into facilities, including the cost of an artist on the design team.

(13) Audit Finding: Audit finding means the deficiencies that the auditor is required to report in the schedule of findings and questioned costs as required by 2 CFR § 200.516(a).

(14) Auditee: Auditee means any recipient or subrecipient that expends federal assistance that must be audited as required under 2 CFR § 200, subpart F.

(15) Auditor: Auditor means a public accountant or a federal, state or local government audit organization that meets the general standards specified in Generally Accepted Government Auditing Standards (GAGAS); as required for the purpose of conducting

Single Audits, 2 CFR § 200.7. The term auditor does not include internal auditors of nonprofit organizations. Auditor may also mean, other non-financial audits as deemed necessary by FTA.

(16) Award: Award means the Scope of Work that FTA has approved when FTA agreed to provide federal assistance. The Award also includes the requirements of all documents, terms, and conditions incorporated by reference and made part of the Grant or Cooperative Agreement.

(17) Award Budget: Award Budget means the budget for all the Projects encompassed by the FTA award. Project Budget means the budget allocated for a Project contained within an Award that FTA or a pass-through entity approves during the federal award process or in subsequent amendments to the federal award. It may include the federal and non-federal share or only the federal share, as determined by FTA or pass-through entity.

(18) Brownfields: The Environmental Protection Agency (EPA) defines "brownfields" as real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. These properties have lower levels of contamination than Superfund sites, but they are still a health risk and economic detriment to the communities where they are located.

(19) Budget Revision: Budget revision means any change of budget allocations within the Award and the overall Award Budget that has minor impact on the budget allocations of the original Grant or Cooperative Agreement.

(20) Capital Assets: Capital assets mean facilities or equipment with a useful life of at least one year that are capitalized in accordance with Generally Accepted Accounting Principles (GAAP).

(21) Capital Expenditures: Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

(22) Capital Lease: Capital lease means any transaction in which the recipient acquires the right to use a capital asset without obtaining full ownership, regardless of the tax status of the transaction.

(23) Capital Project: Capital project means a category of reimbursable projects that includes all activities identified in 49 U.S.C. § 5302(3).

(24) Cash Basis of Accounting: The cash basis of accounting is the method in which revenue is recorded when received, rather than when earned, and expenses are recorded when paid, rather than when incurred. FTA does not permit recipients to prepare their Federal Financial Reports (FFR) using the cash method of accounting.

(25) Catalog of Federal Domestic Assistance (CFDA): The Catalog of Federal Domestic Assistance is a Government-wide compendium of federal programs, projects, services, and activities that provide assistance or benefits to the American public. It contains financial and nonfinancial assistance programs administered by departments and establishments of the Federal Government. The CFDA number assigned to each program is used to report and track audit findings related to federal Grants and Cooperative Agreements.

(26) Claim: Claim means, depending on the context, either: (1) A written demand or written assertion by one of the parties to a federal award seeking as a matter of right: (a) The payment of money in a sum certain, (b) The adjustment or interpretation of the terms and conditions of the federal award, or (c) Other relief arising under or relating to a federal award, or (2) A request for payment that is not in dispute when submitted.

(27) Closeout: Closeout means the process by which FTA, or pass-through entity, determines that the scope of work of the federal award and all applicable administrative actions, including actions described in 2 CFR § 200.343, have been met or FTA has determined the award should be terminated.

(28) Cluster of Programs: A cluster of programs means a grouping of closely-related programs that share common compliance requirements. A cluster of programs must be considered as one program for determining major programs, as described in 2 CFR § 200.518 and, with the exception of Research and Development, as described in 2 CFR § 200.501(c), to determine whether a program-specific audit may be elected.

(29) Cognizant Agency for Audit: The cognizant agency for audit is the federal agency designated to carry out the responsibilities described in 2 CFR § 200.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit may be found at the Federal Audit Clearinghouse (FAC) Web site.

(30) Cognizant Agency for Indirect Costs: The cognizant agency for indirect costs is the federal agency responsible for reviewing, negotiating, and approving cost allocation plans, or indirect cost proposals, developed on behalf of all federal agencies. The cognizant agency for indirect costs is not necessarily the same as the cognizant agency for audit. *See* Appendices of 2 CFR part 200 for further information regarding assignment of cognizant agencies.

(31) Computing Devices: Computing devices are machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information.

(32) Concurrent Non-Project Activities: Also known as betterments, concurrent non-project activities means improvements to the transit project desired by the recipient that are not

integral to the planned functioning of the federal transit project and are carried out simultaneous with the execution of the Grant or Cooperative Agreement and are not included in the FTA Grant or Cooperative Agreement. These activities, however, can be included in a single Award containing both project activities and non-project activities.

(33) Contingency Fleet: Contingency fleet means inactive rolling stock reserved or retained for emergencies or other unforeseen, justified, and FTA-approved activities. A contingency fleet is separate from the spare fleet, and is not included in the spare ratio.

(34) Coordinated Public Transit-Human Service Transportation Plan (Coordinated Plan): Coordinated plan means a locally-developed, coordinated transportation plan that identifies the transportation needs of individuals with disabilities, seniors, and people with low incomes, provides strategies for meeting those needs, and prioritizes transportation services for funding and implementation. Coordinated Plans are explained in more detail in FTA Circular 9070.1G, "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions."

(35) Cooperative Agreement: Cooperative agreement means a legal instrument of financial assistance between a federal awarding agency and a recipient, consistent with 31 U.S.C. §§ 6302 and 6305, that: (1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the federal awarding agency to the recipient to carry out a public purpose authorized by a law of the United States (*see* 31 U.S.C. § 6101(3) for the definition of "assistance") and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use; and (2) Is distinguished from a Grant in that it anticipates substantial involvement between the federal awarding agency and the recipient in carrying-out the activities of the cooperative agreement. At a minimum, FTA's role generally includes the right to participate in decisions to redirect and reprioritize project activities, goals, and deliverables. The latest edition of FTA Circular 6100, "Research, Technical Assistance and Training Program: Application Instructions and Program Management Guidelines," provides specific guidance regarding cooperative agreements including application requirements, award budget and Statement of Work changes, and disposition of property.

(36) Corrective Action: Corrective action means an action taken by the recipient being audited or reviewed that: (1) corrects identified deficiencies or findings, (2) recommends improvements to recipient's processes to eliminate root causes of non-conformities, or (3) demonstrates that audit findings are either invalid or do not warrant auditee action.

(37) Cost Allocation Plan: Cost allocation plan means one or more documents identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a state, local government, or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users (may also be referred to as the Central Service Cost Allocation Plan).

(38) Cost Objective: Cost objective means a program, function, activity, award, organizational third-party contract, subdivision, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, *etc.* A cost objective may be a major function of the recipient or subrecipient, a particular service or project, a federal award, or an indirect (Facilities & Administrative (F&A)) cost activity as described in 2 CFR part 200, subpart E - Cost Principles.

(39) Cost Sharing or Non-Federal Share: Cost sharing, or non-federal share, means the portion of project costs not paid with federal assistance (unless otherwise authorized by federal statute). This cost share, or non-federal share, may include programmatic matching requirements, or other non-federal funds, to comprise the overall Award Budget to complete the scope of work for the Award.

(40) Cross-Cutting Audit Finding: A cross-cutting audit finding means an audit finding in which the same underlying condition or issue affects federal awards made by more than one federal awarding agency or pass-through entity.

(41) Data Universal Numbering System (DUNS) number: DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to identify entities uniquely. An applicant, recipient, and subrecipient must have a DUNS number in order to apply for, receive, and report on a federal award.

(42) Depreciation: Depreciation means the method used to calculate the reduction in value of an item of personal or real property over time. It is the term most often used to indicate that personal property has declined in service potential. For purposes of this circular, it is also a method to calculate the value that is used when disposing of an asset before the end of its useful life when fair market value cannot be established.

(43) Designated Recipient: Designated recipient means an entity designated, in accordance with the planning process under 49 U.S.C. §§ 5303 and 5304 by the governor of a state, responsible local officials, and publicly-owned operators of public transportation, to receive and apportion amounts under 49 U.S.C. § 5336 to urbanized areas of 200,000 or more in population; or a state or regional authority, if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation.

(44) Direct Carbon Emissions: Direct carbon emission means the quantity of direct greenhouse gas emissions from a vehicle, as determined by the Administrator of the Environmental Protection Agency.

(45) Direct Recipient: Direct recipient means an entity that receives funding directly from FTA.

(46) Disallowed Costs: Disallowed costs means those charges to a federal award that the federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable federal statutes, regulations, or the terms and conditions of the federal award.

(47) Disability: The term disability has the same meaning as in section 3(1) of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12102. The term "disability" means, with respect to an individual: (1) a physical or mental impairment that substantially limits one or more major life activities of such individual, (2) a record of such an impairment, or (3) being regarded as having such an impairment.

(48) Discretionary Funding: Discretionary funding means federal assistance distributed at the discretion of the agency, or by Congress, as distinct from formula funding.

(49) Disposition: The settlement of the federal interest in project property that is no longer needed or the originally authorized purpose.

(50) Electronic Clearing House Operation (ECHO) System: ECHO means a Web-based application system that processes draw down payment requests and makes payments to FTA recipients.

(51) Electronic Award and Management System (EAMS): EAMS means a system that recipients and FTA use to manage applications for federal assistance, including the review, approval, and management of all awards. This system is also used by recipients to submit the Federal Financial Report and other financial status reports, Milestone Progress Reports, and requests for modifications to awards. This term includes FTA's Transportation Electronic Award and Management (TEAM), Transit Award Management System (TrAMS) and any subsequent system(s).

(52) Equipment: Equipment means an article of nonexpendable, tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes, or $5,000. Equipment includes rolling stock, computing devices, information technology systems, supplies, and all other such property used in the provision of public transit service.

(53) Equipment Inventory: Equipment inventory means a physical inventory taken of project property and supplies, with the results reconciled with the personal property records.

(54) Excess Property: Excess property means property that the recipient determines is no longer required for its needs or fulfillment of its responsibilities, and has not met its useful life under the recipient's Grant or Cooperative Agreement.

(55) Excess Real Property Inventory and Utilization Plan: Excess real property inventory and utilization plan means the document that lists each real estate parcel acquired with

participation of federal assistance that is no longer needed for purposes of the Grant or Cooperative Agreement, and that states how the recipient plans to use or dispose of the excess real property.

(56) Expenditures: Expenditures mean charges made by a recipient or subrecipient to a project or program for which a federal award was received. The charges must be reported on an accrual basis. Expenditures are the sum of: (1) cash disbursements for direct charges for property and services, (2) the amount of indirect expenses incurred, (3) the value of third-party in-kind contributions applied, and (4) the net increase or decrease in the amounts owed by the recipient or subrecipient for goods and other property received, services performed by employees, third-party contractors, subrecipients, and other payees, and programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

(57) Execute: To execute a Grant or Cooperative Agreement means to affirm the FTA Award of a Grant or Cooperative Agreement. The Grantee's execution is required within 90 days in the FTA EAMS. After the Award has been executed, the Recipient thereof can access the funding made available thereunder.

(58) Facilities: Facilities mean all or any portion of a building or structure including related roads, walks, and parking lots.

(59) Fair Market Value: Fair market value means the most probable price that project property would bring in a competitive and open market.

(60) Federal Agency: Federal agency means an ''agency'' of the Federal Government as defined at 5 U.S.C. § 551(1).

(61) Federal Audit Clearinghouse (FAC): FAC means the clearinghouse designated by OMB as the repository of records where non-federal entities are required to transmit the reporting packages required by 2 CFR part 200, subpart F—Audit Requirements.

(62) Federal Assistance: Federal assistance means federal funding that recipients and subrecipients receive or administer under Grant or Cooperative Agreements in the form of: (1) federal cash contributions, (2) non-cash contributions or donations of property (including donated surplus property), (3) direct appropriations, and (4) other financial assistance (except assistance listed in paragraph (2) of this definition).

For 2 CFR part 200, subpart F—Audit Requirements, federal assistance also includes assistance that non-federal entities receive or administer in the form of: (1) loans, (2) loan guarantees, (3) interest subsidies, and (4) insurance. Federal assistance does not include amounts received as reimbursement for services provided to individuals as Medicare or Medicaid described in 2 CFR § 200.502(h) and (i). Federal assistance differs from the type of funding used for federal procurement contracts.

(63) Federal Award: Federal award, depending on the context, has one of the following meanings: (1) the federal assistance that a recipient receives directly from a federal awarding agency or indirectly from a pass-through entity, as described in 2 CFR § 200.74, or (2) the FTA award as described in the Grant or Cooperative Agreement setting forth the terms and conditions. A federal award does not include other contracts that a federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government-Owned Contractor Operated facilities (GOCOs). *See also* definitions of Federal Assistance, Grant Agreement, and Cooperative Agreement.

(64) Federal Award Date: Federal award date means the date when the federal award is signed by the authorized official of the federal awarding agency.

(65) Federal Interest: For purposes of reporting on real property or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a federal award, federal interest means the dollar amount that is the product of: (1) the federal share of total project costs, and (2) the current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

(66) Federal Program: Federal program means all federal grants and cooperative agreements that are assigned a single number in the CFDA. When no CFDA number is assigned, all federal grants and cooperative agreements to recipients and subrecipients from the same agency made for the same purpose should be combined and considered one program, or a cluster of programs. The types of clusters of programs are: (1) research and development (R&D), and (2) "other clusters," as described in the definition of Cluster of Programs.

(67) Federal Share: Federal share means the portion of the Total Award Budget of a Grant or Cooperative Agreement that are paid with federal assistance.

(68) Federally Recognized Indian Tribal Government or Indian Tribe: Federally recognized Indian Tribal Government or Indian Tribe means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community, (including any native village as defined in section 3 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1602(c), certified by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, 25 U.S.C. § 450b(e). *See* the annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

(69) Fixed Amount Awards: Fixed amount awards means a type of award under which the federal awarding agency, or pass-through entity, provides a specific level of support without regard to actual costs incurred under that award. This type of federal award must meet the current simplified acquisition threshold guidelines (which is $150,000 at the date of publication of this circular) and reduces some of the administrative burden and

record-keeping requirements for the federal awarding agency and the recipient or the pass-through entity and the subrecipient. Accountability is based primarily on performance and results. *See* 2 CFR §§ 200.201(b) and 200.332.

(70) Fleet Management Plan: Fleet management plan means the management plan that includes an inventory of all rail vehicles and includes, among other items, operating policies, peak vehicle requirements, maintenance and overhaul programs, system and service expansions, rolling stock procurements and related schedules, and spare ratio justifications. The plan also calculates the number of rolling stock needed to operate at peak normal days.

(71) Force Account: Force account means the use of a recipient or subrecipient's own labor force to accomplish a capital project. Force account does not include project administration, preventive maintenance, mobility management, or other nontraditional capital project types.

(72) Formula Funding: Formula funding means funding allocated using factors that are specified in law or in an administrative formula developed by FTA.

(73) Generally Accepted Accounting Principles (GAAP): GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

(74) Generally Accepted Government Auditing Standards (GAGAS): GAGAS means Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States, which are applicable to financial audits.

(75) Global Settlement: In the context of real property, global settlement means the consolidation of all payments, including acquisition and relocation, into one payment. This is not permitted on FTA projects as global settlements are considered in conflict with the intent of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). Under the URA, an appraisal sets "just compensation" for the real property involved and is made before the initiation of negotiations on a particular parcel. The relocation of personal property, on the other hand, is reimbursed based upon the actual, reasonable, and necessary costs that most often cannot be determined until after the move is complete.

(76) Grant or Grant Agreement: Grant or Grant Agreement means a legal document in which FTA provides federal assistance to a recipient consistent, with 31 U.S.C. § 6302 and 6304, to carry-out a public purpose as authorized in 31 U.S.C. § 6101(3), and (1) not to be used to acquire property or services for FTA's or the recipient's direct benefit or use, (2) is distinguished from a Cooperative Agreement in that it does not provide for substantial involvement between FTA and the recipient or pass-through entity in carrying-out the activity contemplated by the Grant Agreement, and (3) does not include

an agreement that provides only direct United States Government cash to an individual, a subsidy, a loan, a loan guarantee, or insurance.

(77) Grantee: Grantee means a recipient to which FTA awards a grant directly to support a specific project in which FTA does not take an active role or retain substantial control, as set forth in 31 U.S.C. §§ 6302 and 6304. In this circular FTA uses the term "grantee" interchangeably with "grant recipient," and "direct recipient."

(78) Improper Payment: Improper payment means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, third party contractual, administrative, or other legally applicable requirements. An improper payment may include any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments as authorized by law), any payment that does not account for credit for applicable discounts, and any payment in which insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

(79) Incidental Use of Project Property and Equipment: Incidental use of project property and equipment means the limited authorized non-transit use of project property acquired with FTA assistance. Such use must not conflict with the approved purposes of the project and must not interfere with the intended transit uses of the project property. An acceptable incidental use does not affect a property's transit capacity or use; and, FTA may concur in incidental use after awarding the Grant or entering into Cooperative Agreement.

(80) Indirect Costs: Indirect costs mean costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

(81) Indirect Cost Rate Proposal: Indirect cost rate proposal means the documents prepared by or for the recipient or subrecipient to substantiate its request for the establishment of an indirect cost rate as described in 2 CFR part 200, appendices III, IV, and VII.

(82) Information Technology Systems: Information technology systems mean computing devices, ancillary equipment, software, firmware, and similar services and procedures (including support services), and related resources.

(83) Intangible Property: Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications, and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property at issue is tangible or intangible).

(84) Intermediate Cost Objective: Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives.

(85) Internal Controls: Internal controls means processes implemented by a recipient or subrecipient to provide reasonable assurance regarding the achievement of objectives in the following categories: (1) effectiveness and efficiency of operations, (2) reliability of reporting for internal and external use, and (3) compliance with applicable laws and regulations. The recipient will also have processes implemented that are designed to provide reasonable assurance regarding the achievement of the objectives for the grant or cooperative agreement and that transactions are executed in compliance with federal laws, regulations, and terms of the agreements.

(86) Lapsed Funds: Lapsed funds mean funds no longer available for obligation for a Grant or Cooperative Agreement, or recipient thereof.

(87) Large Urbanized Area: Large urbanized area means an urbanized area (UZA) with a population of at least 200,000 at the time of the last decennial census.

(88) Leased Power Source: Leased power source means the removable power source that is necessary for the operation of a zero emission vehicle and shall not be treated as part of the cost of the vehicle if the removable power source is acquired using a capital lease.

(89) Legal Settlement: Used in the context of a property acquisition by eminent domain, a legal settlement may occur in one of several ways: First, once an acquisition case is referred to legal counsel to initiate condemnation proceedings, a settlement between the parties may occur before a condemnation complaint is filed. The second situation, involves the settlement of a case after the condemnation action has been filed. This may be referred to as a legal or stipulated settlement. In this case a stipulation agreement is prepared and signed by the parties involved after which the court may approve or issue an order approving the stipulation agreement and dismissing the court case. In either case such a settlement would necessarily be justified in writing similarly to an administrative settlement as described in 49 CFR § 24.102(i) of the URA regulations.

(90) Local Government: Local government means any unit of government within a state, including, but not limited to a: (1) county, (2) borough, (3) municipality, (4) city, (5) town, (6) township, (7) parish, (8) local public authority, including any public housing agency under the United States Housing Act of 1937, (9) special district, (10) school district, (11) intrastate district, (12) council of governments, whether or not incorporated as a nonprofit corporation under state law, and (13) any other agency or instrumentality of a multi-regional, or intra-state or local government.

(91) Local Governmental Authority: Local government authority includes: (1) a political subdivision of a state, (2) an authority of at least one state or political subdivision of a

state, (3) an Indian tribe, or (4) a public corporation, board, or commission established under the laws of a state.

(92) Low or No Emission Vehicle: Low or no emission vehicle means a passenger vehicle used to provide public transportation that the Secretary determines sufficiently reduces energy consumption or harmful emissions, including direct carbon emissions, when compared to a comparable standard vehicle; or a zero emission vehicle used to provide public transportation.

(93) Major Capital Project: Major capital project means a project that: (1) involves the construction of a new fixed guideway or extension of an existing fixed guideway, (2) involves the rehabilitation or modernization of an existing fixed guideway with a total project cost in excess of $100 million, or (3) a project that the Federal Transit Administrator determines is a major capital project because the project management oversight program will benefit the recipient or FTA. Typically, a major capital project means a project that is generally expected to have a total project cost in excess of $100 million or more to construct, is not exclusively for the routine acquisition, maintenance, or rehabilitation of vehicles or other rolling stock, involves new technology, is unique for the recipient, or involves a recipient whose past experience indicates the appropriateness of the extension of the project management oversight program.

(94) Major Program: Major program, in the context of audits, means a federal program determined by the auditor to be a major program in accordance with 2 CFR § 200.518 or a program identified as a major program by a federal awarding agency or pass-through entity in accordance with 2 CFR § 200.503(e).

(95) Management Decision: Management decision, in the context of audits, means the evaluation by the federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision to the auditee as to what corrective action is necessary.

(96) Master Agreement: Master Agreement means the official FTA document containing FTA and other cross-cutting federal requirements applicable to the FTA recipient and its Grant or Cooperative Agreement. The Master Agreement typically is revised annually in October. The Master Agreement is incorporated by reference and made part of each FTA Grant, Cooperative Agreement, and amendment thereto.

(97) Metropolitan Planning Area: Metropolitan Planning Areas means the geographic area determined by agreement between the metropolitan planning organization (MPO) for the metropolitan area and the governor of the state, within which the metropolitan transportation planning process is carried out.

(98) Metropolitan Planning Organization (MPO): Metropolitan Planning Organization means the policy board of an organization designated in cooperation with the state and public transportation operators to carry out the metropolitan planning process, including

development of long-range transportation plans and Transportation Improvement Programs (TIP) for metropolitan planning areas of a state.

(99) Mobility Management: Mobility management consists of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a government entity, under 49 U.S.C. chapter 53 (other than section 5309). Mobility management does not include operating public transportation services.

(100) Modified Total Direct Cost (MTDC): MDTC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subawards to recipients and subrecipients up to the first $25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each in excess of $25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

(101) National Transit Database (NTD): The NTD is FTA's primary source for information and statistics collected from transit systems that receive FTA formula funding under the Urbanized Area Formula Program, 49 U.S.C. § 5307, or Rural Area Formula Program, 49 U.S.C. § 5311. Public transportation systems receiving federal assistance from these programs are required by statute to report the required information to the NTD.

(102) National Environmental Policy Act (NEPA): The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, was signed into law on January 1, 1970. The Act established the Council on Environmental Quality (CEQ) and established national environmental policy and goals for the protection, maintenance, and enhancement of the environment; and provides a process for implementing these goals within the federal agencies. While many different federal laws, rules, and regulations govern environmental review of federal actions, NEPA established an umbrella process for coordinating environmental compliance. Therefore, NEPA is the primary law governing the Federal Transit Administration's (FTA) environmental protection process, as implemented through the FHWA/FTA joint regulations found at 23 CFR part 771.

(103) Net Present Value: Net present value means the discounted monetized value of expected net benefits (*i.e.*, benefits minus costs). It is calculated by assigning monetary values to benefits and costs while discounting future benefits and costs using an appropriate discount rate to obtain a present value (*See* OMB Circular A-94.), and subtracting the sum of all of discounted costs from the sum of all of discounted benefits.

(104) Net Proceeds from the Sale of Project Equipment or Real Property: Net proceeds from the sale of project equipment or real property means the amount realized from the sale of

property no longer needed for transit purposes minus the expense of any actual and reasonable selling and other necessary expenses associated with repairs to make the property saleable.

(105) Net Project Cost: Net project cost is the amount of eligible costs of a project covered by the non-federal and FTA shares. Net project cost means the part of a public transportation project that reasonably cannot be financed from revenues. *See* 49 U.S.C. § 5302(12). FTA interprets "revenues" as farebox revenues.

(106) New Bus Model: New bus model means a bus model (including a model using alternative fuel) that has not been used in public transportation in the United States before the date of production of the model, or has been used in public transportation in the United States, but is being produced with a major change in configuration or components.

(107) Non-Federal Entity: A non-federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a federal award as a recipient or subrecipient.

(108) Non-Federal Share or Non-Federal Funds: Non-federal share or non-federal funds includes the following sources of funding or in-kind property or services used to match the federal assistance awarded for the Grant or Cooperative Agreement: (a) Local funds, (b) Local in-kind property or services, (c) State funds, (d) State in-kind property or services, and (e) Other federal funds that are eligible for use as cost sharing or matching funds for the Underlying Agreement,

(109) Nonprofit Organization: A nonprofit organization means a corporation, trust, cooperative, association, or other organization, not including IHEs, determined by the Secretary of the Treasury to be an organization described by 26 U.S.C. § 501(c), that is exempt from taxation under 26 U.S.C. § 501(a), or an organization that has been determined under state law to be nonprofit and for which the designated state agency has received documentation certifying the status of the nonprofit organization. A nonprofit organization generally: (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest, (2) is not organized primarily for profit, and (3) uses its net proceeds to maintain, improve, or expand the operations of the organization.

(110) Obligation: Obligation has two separate meanings when used in connection with FTA actions described in this circular. First, obligation means a definite commitment that creates a legal liability of the Federal Government by awarding federal assistance through a Grant or Cooperative Agreement. When used in connection with a recipient's use of federal assistance under an FTA award, "obligation" means an order placed for property and services, a third-party contract entered into, subagreement made, and similar transaction during a given period that requires payment by the Recipient during the same or a future period.

(111) Office of Management and Budget (OMB): OMB means the Office of Management and Budget within the Executive Office of the President.

(112) Operating Expenses: Operating expenses mean those costs necessary to operate, maintain, and manage a public transportation system. Operating expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year.

(113) Overhaul: Systematic replacement or upgrade of systems whose useful life is less than the useful life of the entire vehicle in a programmed manner. Overhaul is performed as a planned or concentrated preventive maintenance activity and is intended to enable the vehicle to perform to the end of the original useful life. Rolling stock must have accumulated at least 40 percent of its useful life before FTA will participate in the costs of its overhaul.

(114) Oversight Agency for Audit: Oversight agency for audit means the federal awarding agency that provides the predominant amount of funding directly to a recipient or subrecipient not assigned a cognizant agency for audit. When there is no direct funding, the federal awarding agency that is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in 2 CFR § 200.513(b).

(115) Pass-Through Entity: Pass-through entity means a recipient that provides federal assistance through a subaward to a subrecipient to carry out part of a federal Grant or Cooperative Agreement.

(116) Participant Support Costs: Participant support costs mean direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

(117) Period of Performance: Period of performance means the time during which the recipient or subrecipient may incur costs to carry out the scope of work authorized under the Grant or Cooperative Agreement. The FTA or the pass-through entity must include the start and end dates of the period of performance (for each project) in the Grant or Cooperative Agreement and indicate whether pre-award authority has been exercised. The period of performance is generally the time between the effective date of the award or when pre-award authority began and the ending date of the award reflected in the final federal financial report.

(118) Personal Property: Personal property means property other than real property. It may be tangible if it has a physical existence, or intangible, if it does not have a physical existence.

(119) Pre-award Authority: Pre-award authority means authority given under specific and limited circumstances to incur costs for eligible project activities before an award is

made, without prejudice, to possible federal participation in the cost of those project activities. Applicants must comply with all applicable federal requirements. Failure to comply with applicable federal requirements will render those project costs or, in certain cases, the project in its entirety, to be ineligible for FTA assistance.

(120) Preventive Maintenance: Preventive maintenance means all maintenance costs related to vehicles and non-vehicles. Specifically, preventive maintenance includes all the activities, supplies, materials, labor, services, and associated costs required to preserve or extend the functionality and serviceability of the asset in a cost effective manner, up to and including the current state of the art for maintaining such an asset.

(121) Program Income: Program income means gross income earned by the recipient or subrecipient that is directly generated by a supported activity or earned as a result of the Grant or Cooperative Agreement during the period of performance (the time between the effective date of the award and the ending date of the award reflected in the final financial report). Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under federal awards, the sale of commodities or items fabricated under a federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with federal assistance. Interest earned on advances of federal assistance is not program income. Except as otherwise provided in federal statutes, regulations, or the terms and conditions of the federal award, program income does not include rebates, credits, discounts, taxes, special assessments, levies, and fines raised by a recipient and subrecipient, and interest earned on any of them.

(122) Program of Projects (POP): POP means a list of projects to be funded in certain applications submitted to FTA by a designated recipient, state or local government. The POP lists the recipients and subrecipients and indicates whether they are private non-profit agencies, governmental authorities, or private providers of transportation service. The POP also designates the areas served (including rural areas, as applicable) and identifies any tribal entities. In addition, the POP includes a brief description of the projects, the total project cost, the federal share for each project, and the amount of funds used for program administration from the allowed percentage.

(123) Project: Project is defined as public transportation improvement activities eligible for Federal assistance in an application to FTA and/or in an FTA award.

(124) Project Property: Project property means any real property, equipment, supplies, or improvements included in the costs of an FTA-assisted project, regardless of whether such property was acquired using FTA assistance, was provided as the non-federal share, donated by a third party, or acquired in some other way.

(125) Property: *See* definitions of"Real Property" and "Personal Property.

(126) Public Transportation: Public transportation means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income. Public transportation does not include intercity passenger rail transportation provided by AMTRAK, intercity bus service, charter bus service, school bus service, sightseeing service, courtesy shuttle service for patrons of one or more specific establishments, intra-terminal or intra-facility shuttle services. The terms "transit" and "mass transportation" are used interchangeably with "public transportation."

(127) Questioned Cost: Questioned cost means a cost that an auditor questions due to an audit finding: (1) that resulted from a violation or possible violation of a law, regulation, or the terms and conditions of the Grant or Cooperative Agreement, including funds used to match the federal assistance provided, (2) in which the cost, at the time of the audit, is not supported by adequate documentation, or (3) in which the cost incurred appears unreasonable and does not reflect the actions a prudent person would take in the circumstances.

(128) Real Property: Real property includes land, including land improvements, structures, and appurtenances thereto, but excludes moveable machinery and equipment. Real property may be contributed as part of the non-federal share.

(129) Real Property Inventory: The federal awarding agency or pass-through entity must require a non-federal entity to submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the federal interest in the real property extends 15 years or longer. In those instances in which the federal interest attached is for a period of 15 years or more, the federal awarding agency or pass-through entity, at its option, may require the non-federal entity to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or a federal awarding agency or pass-through entity may require annual reporting for the first three years of a federal award and thereafter require reporting every five years).

(130) Realty/Personalty Report: A Realty/Personalty Report means a report that lists real estate to be appraised and items of personalty to be moved. Real property is land and anything permanently affixed to the land, such as buildings, fences, and those things attached to the buildings that, if removed, would deface the structure or integrality of the building, such as plumbing, heating fixtures, *etc.* Personal property, on the other hand, is property of a temporary or moveable nature, and is not real property. State law varies on the definition of real property and personal property. Therefore, the recipient should rely on its state laws pertaining to real property and personal property.

(131) Rebuild: Rebuild means a capital activity associated with rolling stock that occurs at, or near, the end of a unit of rolling stock's useful life, and that results in an extended useful life for the unit of rolling stock consistent with the extent of the rebuilding.

(132) Recipient: Recipient means an entity that receives funds from FTA to carry out an activity under a federal program. For purpose of this circular, a recipient can be a grant recipient, grantee, or a direct recipient, but can also be a recipient of federal assistance through a cooperative agreement. The term recipient does not include subrecipient.

(133) Refurbishment: *See* the definition of Overhaul.

(134) Remaining Federal Interest for Dispositions Before the End of the Useful Life of Project Property: Remaining federal interest for dispositions before the end of the useful life of project property means the amount calculated by multiplying the current fair market value or proceeds from the sale by FTA's share of the property. Fair market value means the most probable price project property would bring in a competitive and open market.

(135) Remaining Federal Interest in Real Property: Remaining federal interest in real property means the federal share of the fair market value of the property, the straight line depreciated value of improvements thereof, or the federal share of the current appraised land value, whichever is greater.

(136) Remanufactured Vehicles: Remanufactured vehicles means a previously owned/used vehicle that has undergone or requires substantial structural, mechanical, electrical, and/or cosmetic rebuilding, restoration or updating and that is to be acquired or leased by a new party -- must meet all of the requirements for new bus models (*e.g.*, useful life, bus testing, *etc.*).

(137) Removable Power Source: A power source that is separately installed in, and removable from a zero emission vehicle and may include a battery, a fuel cell, an ultra-capacitor, or other advance power source.

(138) Rent Schedules: Rent schedules refer to a method used to document an array of rent and utilities charged in an area or neighborhood for various size dwellings based on a survey of available dwellings listed for rent.

(139) Rolling Stock: Rolling stock describes equipment that is used to transport passengers and includes buses, vans, cars, locomotives, trolley cars, ferryboats, and vehicles used for guideways and incline planes.

(140) Rolling Stock Repowering: Rolling stock repowering involves replacing a vehicle's propulsion system with a propulsion system of a different type (*e.g.*, replacing a diesel engine with an electric battery propulsion system). Rolling stock repowering is permitted for buses that have met at least 40 percent of their useful life; in which case, it must be designed to permit the bus to meet its useful life requirements. Rolling stock repowering is permitted as part of a rebuild; in which case, it must extend the useful life by at least 4 years.

(141) Rolling Stock Status Report: Rolling stock status report means a report that identifies rolling stock to be retired or disposed of, and identifies both its mileage and age at the

time that it has been or will be removed from service. The report also discusses the anticipated spare ratio.

(142) Rural Area: Rural area means an area encompassing a population of less than 50,000 people that has not been designated in the latest decennial census as an "urbanized area" by the Secretary of Commerce.

(143) Satisfactory Continuing Control: The legal assurance that project property will remain available to be used for its originally authorized purpose throughout its useful life or until disposition.

(144) Sales Proceeds: Sales proceeds mean the net proceeds generated by the disposition of excess real property or equipment that was purchased in whole or in part with FTA assistance.

(145) Scope Code: Scope Codes are used to define the broad categories of work, and each Scope Code has a defined listing of related activities or activity line items (ALIs). A project may have multiple scope codes and ALIs to clearly define the work necessary to complete a scope of work included within the Grant or Cooperative Agreement.

(146) Scope of Work: Scope of work means the purpose of the Grant or Cooperative Agreement and the activities and approaches required to carry out a project. The scope of work is made up of various components, including the Award Budget, beneficiaries, locations, and other aspects identified in the approved application. FTA reserves the right to consider other information in determining the "scope of the project," the "scope of work of a Grant." or "the scope of work of a Cooperative Agreement" when "scope" is used for other purposes.

(147) Secretary: For purposes of this circular, "Secretary" means the Secretary of Transportation.

(148) Senior: A senior is an individual who is 65 years of age or older.

(149) Shared Use: Shared use means those instances in which a participant in the Grant or Cooperative Agreement, separate from the direct recipient, occupies part of a larger facility and pays for its pro rata share of the construction, maintenance, and operation costs. Shared uses are declared at the time FTA awards federal assistance for the Grant or Cooperative Agreement.

(150) Small Urbanized Areas: As used in the context of FTA formula programs, small urbanized areas mean UZAs with a population of at least 50,000 but less than 200,000.

(151) State: State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the

Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

(152) Straight Line Depreciation: In the absence of fair market value, straight line depreciation means a method used to determine the value of the remaining useful life of property. This method is calculated as a function of time instead of a function of usage. It is based on the premise that an asset's economic usefulness is the same in each year of its useful life.

(153) Subaward: Subaward means an award provided by a pass-through entity to a subrecipient to provide federal assistance for the subrecipient to carry out part of the Grant or Cooperative Agreement between FTA and the recipient. It does not include payments to a third-party contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be established using any form of legal agreement, including an agreement that the pass-through entity considers a contract.

(154) Subrecipient: Subrecipient means an entity that receives a subaward (or subgrant) from a pass-through entity to carry out part of a federal program, but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal assistance awarded to it directly by a federal awarding agency.

(155) Supplies: Supplies mean all tangible personal property, other than equipment, with a unit value of less than $5,000.

(156) System for Award Management (SAM): Entities must be registered in the System for Award Management (SAM) and be in active status to receive funding from federal Grants, Cooperative Agreements, or Contracts.

(157) TEAM-Web: TEAM-Web is a Web-based electronic award and management system used to apply for, administer, and manage FTA awards most commonly referred to as "TEAM." TEAM stands for Transportation Electronic Award and Management (TEAM) system.

(158) Termination: Termination means the ending of federal support for an Award, in whole or in part, at any time before the planned end of period of performance.

(159) Third-Party Contract: Third party contract means a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the Grant or Cooperative Agreement. This does not include an instrument describing a transaction that meets the definition of a federal Award, Grant, Cooperative Agreement, Subaward, or Subagreement.

(160) Third Party Contractor: Third party contractor means an entity that receives a third party contract, as defined in the definition of "Third Party Contract" above.

(161) Third-Party In-Kind Contributions: Third party in-kind contributions mean non-cash contributions (*i.e.*, property or services) that: (1) benefit a federally assisted project or program, and (2) are contributed by non-federal third parties, without charge, to a recipient or subrecipient under a federal award.

(162) TrAMS: Transit Award Management System (TrAMS) is a Web-based electronic award and management system to be used, when released by FTA, to apply for, administer, and manage FTA awards.

(163) Transportation Improvement Program (TIP):A prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the Metropolitan Transportation Plan, and required for projects to be eligible for funding under title 23, United States Code and 49 U.S.C. chapter 53.

(164) Transit Enhancements: *See* definition for Associated Transit Improvements.

(165) Uneconomic Remnant: Uneconomic remnant means a parcel of real property in which the owner is left with an interest after the partial acquisition or use of the owner's property, and that the acquiring agency has determined has little or no value or utility to the owner.

(166) Unified Planning Work Program (UPWP): UPWP means a program of work identifying the planning priorities and activities to be carried out within a metropolitan planning area (MPA) during the next one- or two-year period. At a minimum, a UPWP includes a description of the transportation planning work and resulting products, the non-federal entity that will be responsible for performing the work, the time frames for completing the work, the cost of the work, and the source(s) of funds.

(167) Uniform Relocation Act (URA): Uniform Relocation Act refers to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 *et seq*. This act also is referred to with the abbreviation URA per the regulations codified at 49 CFR part 24. All real estate acquisition and relocation assistance undertaken with federal assistance must be compliant with this act and its implementing regulations at 49 CFR part 24.

(168) Uniform System of Accounts (USOA): The USOA means a structure of categories and definitions used for National Transit Database (NTD) reporting to ensure uniform data. The USOA contains various categories of accounts and records for classifying financial (Chart of Accounts) and operating data.

(169) Unliquidated Obligations: Unliquidated obligations means the funding commitments that have been incurred by recipients and subrecipients, but expenditures have not yet been recorded because goods and services have not been received. Unliquidated obligations should be accounted for on Line I and J of the Federal Financial Report (FFR).

(170) Unobligated Balance: Unobligated balance means the amount of federal assistance remaining under the Grant or Cooperative Agreement that the recipient or subrecipient has not obligated. The amount is computed by subtracting the cumulative amount of the recipient or subrecipient's unliquidated obligations and expenditures of funds under the Grant or Cooperative Agreement from the cumulative amount of the funds that the federal awarding agency or pass-through entity that the recipient or subrecipient may obligate.

(171) Urbanized Area (UZA): Urbanized area means an area encompassing a population of not less than 50,000 people that has been designated in the latest decennial census as an urbanized area by the Secretary of the Department of Commerce.

(172) Useful Life: Useful life means the expected lifetime of property, or the acceptable period of use in service. Useful life of revenue rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. **Note:** Land does not depreciate and does not have a useful life; however, construction, buildings, improvements, and so forth, occupying the land do have a useful life and depreciate.

(173) Value Capture: Value Capture means recovering the increased property value to property located near public transportation resulting from investments in public transportation.

(174) Value Engineering: Value engineering means the systematic application of recognized techniques that identify the function of a product or service, establish a value for that function, and provide the necessary function reliably at the lowest overall cost. In all instances, the required function should be achieved at the lowest possible life-cycle cost consistent with requirements for performance, maintainability, safety, security, and aesthetics.

(175) Voluntary Committed Cost Sharing: Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the application's budget or the federal award on the part of the recipient or subrecipient and that becomes a binding requirement of the federal award.

(176) Zero Emission Vehicle: Zero emission vehicle means a low or no emission vehicle that produces no carbon or particulate matter. *See* also "Low or No Emission Vehicle."

b. Acronyms

ACH – Automated Clearing House
ADA – Americans with Disabilities Act
ALI – Activity Line Item
ANCSA – Alaska Native Claims Settlement Act
CAA – Clean Air Act

CAP – Cost Allocation Plan
CAS – Cost Accounting Standards
CCR – Central Contractor Registration
CFDA – Catalog of Federal Domestic Assistance
CFR – Code of Federal Regulations
CMAQ – Congestion Mitigation and Air Quality
CMIA – Cash Management Improvement Act
COFAR – Council on Financial Assistance Reform
COG – Councils of Governments
COSO – Committee of Sponsoring Organizations of the Treadway Commission
CTAA – Community Transportation Association of America
D&B – Dun and Bradstreet
DAMIS – Drug and Alcohol Management Information System
DBE – Disadvantaged Business Enterprises
DHHS – U.S. Department of Health and Human Services
DHS – Department of Homeland Security
DOL – Department of Labor
DOT – Department of Transportation
DSR – Debt Service Reserve
DSS – Decent, Safe and Sanitary
DUNS – Data Universal Numbering System
EAMS – Electronic Award and Management System
ECHO – Electronic Clearing House Operation
ECN – Echo Control Number
EEOC – Equal Employment Opportunity Commission
EPA – Environmental Protection Agency
ERISA – Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1301–1461
ESC – FAA, Enterprise Service Center
EUI – Energy Usage Index
F&A – Facilities and Administration
FAA – Federal Aviation Administration
FAC – Federal Audit Clearinghouse
FAIN – Federal Award Identification Number
FAP – Force Account Plan
FAPIIS – Federal Awardee Performance and Integrity Information System
FAR – Federal Acquisition Regulation
FAST – Fixing America's Surface Transportation Act
FEMA – Federal Emergency Management Agency
FFATA – Federal Funding Accountability and Transparency Act of 2006 or Transparency Act, Public Law 109-282, as amended by section 6202(a) of Public Law 110-252, 31 U.S.C. § 6101
FFGA – Full Funding Grant Agreement
FFR – Federal Financial Report
FHWA – Federal Highway Administration
FICA – Federal Insurance Contributions Act

FMO – Financial Management Oversight
FOIA – Freedom of Information Act
FPC – Financial Purpose Code
FR – Federal Register
FTA – Federal Transit Administration
FTE – Full-Time Equivalent
FY – Fiscal Year
GAAP – Generally Accepted Accounting Principles
GAGAS – Generally Accepted Government Accounting Standards
GAO – General Accounting Office
GOCO – Government Owned, Contractor Operated
GPO – Government Printing Office
GSA – General Services Administration
IAA – Intgeragency Agreement
IBS – Institutional Base Salary
IHE – Institutions of Higher Education
IRC – Internal Revenue Code
ISDEAA – Indian Self-Determination and Education and Assistance Act
ITS – Intelligent Transportation Systems
LEP – Limited English Proficient Persons
LONP – Letter of No Prejudice
MAP-21 – The Moving Ahead for Progress in the 21st Century Act
MOU – Memorandum of Understanding
MPO – Metropolitan Planning Organization
MPA – Metropolitan Planning Area
MPR – Milestone Progress Report
MTC – Modified Total Cost
MTDC – Modified Total Direct Cost
NEPA – National Environmental Policy Act
NTD – National Transit Database
OMB – Office of Management and Budget
PII – Personally Identifiable Information
PMO – Project Management Oversight
PMP – Project Management Plan
POP – Program of Projects
PRHP – Post-retirement Health Plans
PTE – Pass-through Entity
RAMP – Real Estate Acquisition Management Plan
REUI – Relative Energy Usage Index
SAM – System for Award Management
SNAP – Supplemental Nutrition Assistance Program
SOW – Scope of Work
SPOC – Single Point of Contact
SSMP – State Safety Management Plan
STP – Surface Transportation Program

STIP – Statewide Transportation Improvement Plan
SWCAP – Statewide Cost Allocation Plan
TANF – Temporary Assistance for Needy Families
TEAM – Transportation Electronic Award Management
TIP – Transportation Improvement Plan
TrAMS – Transit Award Management System
TFM – Treasury Financial Manual
TSA – Transportation Security Agency
TSO – FTA, Office of Safety and Oversight
UPWP – Unified Planning Work Program
URA – Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
U.S.C. – United States Code
USOA – Uniform System of Accounts
UZA – Urbanized Area
VAT – Value Added Tax
VE – Value Engineering
VIN – Vehicle Identification Number

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CHAPTER II

CIRCULAR OVERVIEW

1. GENERAL. This circular provides requirements and procedures for management of all applicable Federal Transit Administration (FTA) programs authorized under 49 U.S.C. chapter 53.

   FTA implements DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR part 1201, which incorporates by reference U.S. Office of Management and Budget (OMB) guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR part 200, for awards made on and after December 26, 2014, and former 49 CFR parts 18 and 19 for awards made before December 26, 2014. Both 2 CFR part 1201 and former 49 CFR part 18 have specific provisions for certain state control of the administration of equipment, procurement, and financial management. State requirements apply to those programs that have states as recipients, including 49 U.S.C. §§ 5305, 5310, 5311, former 5316, and former 5317. These state requirements also apply to States that receive federal assistance under other FTA programs for which both state and non-state entities are eligible.

2. APPLICABLE PROGRAM DESCRIPTIONS. FTA provides formula and discretionary funding under a variety of programs by awarding federal assistance to an eligible recipient that is documented in the Grant or Cooperative Agreement. While this circular contains the post-award guidance applicable to all applicable FTA programs, several of the programs described below have individual program circulars that contain pre-award instructions, project management guidance, and unique administrative requirements that apply to the Award. Additionally, recipients of funding under Sections 5312, 5314, and 5318 should reference FTA Circular 6100 "Research, Technical Assistance and Training Program: Application Instructions and Program Management Guidelines" rather than this Circular.

   If there is a conflict between FTA Circular 5010.1 and program specific circulars, program specific circulars should prevail. Please reference FTA's public website at http://www.fta.dot.gov for a complete listing of FTA programs and their current FTA circulars.

   a. New and Revised Programs Under MAP-21 or the FAST Act:

      (1) Metropolitan Planning and Statewide Planning and Research Programs (Section 5305(d) and (e) to implement Section 5303 and Section 5304). These programs provide federal assistance to support cooperative, continuous, and comprehensive planning for making transportation investment decisions in metropolitan areas and statewide.

      For planning activities that:

      (a) Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency,

(b) Increase the safety of the transportation system for motorized and nonmotorized users,

(c) Increase the security of the transportation system for motorized and nonmotorized users,

(d) Increase the accessibility and mobility of people and for freight,

(e) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and state and local planned growth and economic development patterns,

(f) Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight,

(g) Promote efficient system management and operation,

(h) Emphasize the preservation of the existing transportation system, and

(i) Improve the resiliency and reliability of the transportation system.

Federal assistance is apportioned annually by a formula to states that include consideration of each state's urbanized area population in proportion to the urbanized area population for the entire nation as well as other factors. States receive no less than 0.5 percent of the amount apportioned. These funds are sub-allocated by states to Metropolitan Planning Organizations (MPOs) by a formula that considers each MPO's urbanized area population, their individual planning needs, and a minimum distribution. For more information, please refer to the Joint Planning Regulations at 49 CFR part 613 and FTA Circular 8100.1. To be eligible for federal assistance under these programs, projects and strategies must come from the applicable transportation planning process.

(2) Urbanized Area Formula Program (Section 5307), including a Passenger Ferry Grant Program (Section 5307(h)). The Urbanized Area Formula Program makes federal resources available to urbanized areas, for transit planning, capital, and operating assistance in urbanized areas. An urbanized area is an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an "urbanized area" by the Secretary of Commerce.

For urbanized areas with a population of 200,000 or more (as determined by the Bureau of the Census), federal assistance for the Urbanized Area Formula Program is apportioned and flows directly to a designated recipient(s) selected by the governor, responsible local officials, and publicly owned operators of public transportation to receive and apportion urbanized area formula assistance. For urbanized areas under 200,000 in population, the funds are apportioned to the governor of each state for distribution, unless such an area has been designated as a transportation management

area at the request of the governor and the MPO. These areas also receive apportionments directly. Guidance for Section 5307 is found in FTA Circular 9030.1. To be eligible for awards under this program, projects and strategies must be proposed through the applicable transportation planning process and contained in a local Transportation Improvement Plan and State Transportation Improvement Plan. A competitive Passenger Ferry Grant Program is also established under Section 5307(h).

Additional information about the Urbanized Area Formula Program, including the Passenger Ferry Grant Program is available in the most current version of FTA Circular 9030.1.

(3) Fixed Guideway Capital Investment Program – New and Small Starts and Core Capacity Improvements (Section 5309).

The Fixed Guideway Capital Investment Grants Program is a discretionary grant program that finances the construction of new fixed guideway systems or extensions to existing fixed guideway systems, corridor-based BRT projects, and, as amended by MAP-21 and the FAST Act, projects that will expand the capacity of existing fixed guideway corridors that are at capacity or will be in five years. States and local governmental authorities are eligible applicants for federal assistance under Section 5309.

Projects become candidates for awards under this program by successfully completing steps in the process defined in Section 5309 and obtaining a satisfactory rating under the statutorily defined criteria. For New Starts and Core Capacity Improvement projects, the steps in the process include project development, engineering, and construction. For Small Starts projects the steps in the process include project development and construction. New Starts and Core Capacity Improvement projects receive construction funds from the program through a full funding grant agreement (FFGA) that defines the scope of the project and specifies the total multiyear federal commitment to the project. Small Starts projects receive construction funds through a single year Grant or an expedited Small Starts Grant Agreement that defines the scope of the project and specifies the federal commitment to the project.

Additional information about the Fixed Guideway Capital Investment Program is available on FTA's website in Capital Investment Grant Program Interim Policy Guidance, published in August 2015, and in the most current version of FTA Circular 9300.1.

(4) Enhanced Mobility of Seniors and Individuals with Disabilities Formula Program (Section 5310).

The goal of the Section 5310 program is to improve mobility for seniors and individuals with disabilities throughout the country by removing barriers to transportation services and expanding the transportation mobility options available. Toward this goal, FTA provides financial assistance for transportation services

planned, designed, and carried out to meet the special transportation needs of seniors and individuals with disabilities in all areas—large urbanized, small urbanized, and rural. The program requires coordination with other federally assisted programs and services in order to make the most efficient use of federal resources.

Guidance on the Section 5310 program is contained in the most current version of FTA Circular 9070.1, "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions."

(5) Rural Areas Formula Program (Section 5311).

The Rural Areas Formula Program is a formula grant program that provides capital, planning, and operating assistance to states and Indian tribes to support public transportation in rural areas with populations of less than 50,000, where many residents often rely on public transportation to reach their destinations. FTA apportions funds under this program to the governor or the governor's designee. Eligible applicants include states and Indian tribes. Eligible subrecipients include private nonprofit organizations and operators of public transportation or intercity bus service that receive federal assistance indirectly through a recipient. Guidance on the Section 5311 program is contained in the most current version of FTA Circular 9040.1, "Formula Grants for Rural Areas: Program Guidance and Application Instructions."

(6) The Tribal Transit Program is financed from amounts made available to carry out the Section 5311 program. Tribal Transit Program funds are either allocated by formula or are awarded on a discretionary competitive basis. Formula factors include vehicle revenue miles and the number of low-income individuals residing on tribal lands. Discretionary funds are allocated based on criteria established for the program. Eligible direct recipients are federally recognized Indian tribes in rural areas. The funds are to be allocated for grants to Indian tribes for any purpose eligible under Section 5311, which includes capital, operating, planning, job access and reverse commute projects, and administrative assistance for rural public transportation services and rural intercity bus service.

(7) The Appalachian Development Public Transportation Assistance Formula Program is financed from amounts made available to carry out Section 5311. This program provides formula funds to support public transportation for states in the Appalachian region. Federal assistance is allocated for any purpose eligible under Section 5311. Additional information on the Section 5311 Rural Area Formula Program is available in the most current version of FTA Circular 9040.1.

(8) Bus Testing Facility Program (Section 5318).

Subsections 5318(a) – (d) authorizing the Bus Testing Facility remain t in effect under the FAST Act. Section 5318 continues support for the Bus Testing Facility where testing of new bus models takes place, operation and maintenance, fees, and

availability of amounts to pay for testing new bus models (which include older bus models that have been produced with a major change in configuration or components) for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise performance characteristics.

MAP-21 expanded subsection 5318(e), Acquiring New Bus Models to include: (1) General requirements, and (2) Bus Test 'Pass/Fail" Standard requirements.

New bus models must now meet performance standards listed in subsection 5318(e) and meet performance standards established by DOT under the new safety authority in subsection 5329(b). Subsection 5318(e) also requires that DOT issue, by rulemaking, a pass/fail bus testing standard. Only bus models that receive a passing score may be purchased with 49 U.S.C. chapter 53 funds. Under the rulemaking, a passing score is not to be interpreted as a warranty or guarantee to bus purchasers that the new bus model will meet their specific requirements.

(9) Public Transportation Emergency Relief Program (Section 5324).

MAP-21 authorized the Section 5324 Public Transportation Emergency Relief Program (ER program). The ER program authorizes FTA to make grants to public transportation agencies that have experienced serious damage to transit assets as a result of an emergency. Emergency is defined as a natural disaster that affects a wide area, such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide, or a catastrophic failure from an external cause, as a result of which the governor of a state has declared an emergency and the Secretary of Transportation has concurred, or the President of the United States has declared a major disaster.

FTA may make grants under the ER program for capital projects to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system that the Secretary determines is in danger of suffering serious damage or has suffered serious damage as a result of a declared emergency. In addition, FTA may reimburse operating expenses that are outside the scope of an affected recipient's normal operations, including but not limited to evacuations, rescue operations, bus, ferry, or rail service to replace inoperable service or to detour around damaged areas, temporary service to accommodate an influx of passengers or evacuees, returning evacuees to their homes after the disaster or emergency, and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after an emergency or major disaster.

Grants under this program, or those made under Sections 5307 or 5311 to address a declared emergency are subject to the terms and conditions that FTA determines are necessary. FTA will not provide federal assistance for any expenses that are reimbursed by the Federal Emergency Management Agency (FEMA).

The ER program is implemented by regulation under 49 CFR part 602, "Emergency Relief." Guidance on the ER program is found in the most current version of the FTA Emergency Relief Manual.

(10) Public Transportation Safety Program (Section 5329).

The Public Transportation Safety Program, Section 5329, requires DOT to create and implement a national safety plan for all public transportation system recipients of 49 U.S.C. chapter 53 funds. In this section, 'recipient' means a state or local governmental authority, or any other operator of a public transportation system, that receives financial assistance under 49 U.S.C. chapter 53.

This section defines the content of the National Public Transportation Safety Plan, establishes a DOT transit safety certification training program, and requires public transit agencies to establish a comprehensive agency safety plan that identifies and seeks to minimize risk, sets safety performance and state of good repair targets, and includes a comprehensive training program.

Section 5329 also establishes the State Safety Oversight (SSO) program for states operating rail transit systems other than commuter rail. This subsection grants states 3 years to establish an approved SSO program with adequately trained staff to oversee rail fixed guideway safety, and to establish a State Safety Oversight Agency. The legislation also requires that SSO agencies be empowered with oversight, investigative, auditing, and enforcement authority, and be independently funded, *i.e.*, prohibits transit agencies from funding the SSO agency; funds must be derived from an independent agency.

Section 5329 authorizes federal oversight of rail transit safety (SSO program) and vests DOT with oversight, investigative, inspection, subpoena, and enforcement powers.

(11) State of Good Repair Formula Program (Section 5337).

The Section 5337 State of Good Repair Formula Program is a formula grant program that provides federal assistance to UZAs with fixed guideway systems and high intensity motorbus systems. The program helps maintain these public transportation systems in a state of good repair by financing replacement and rehabilitation projects for existing fixed guideway systems and high intensity motorbus systems that have been operating for at least seven years. This program was established under MAP-21, which concurrently repealed the Section 5309 Fixed Guideway Modernization formula grant program.

State of good repair funds must be used for capital projects intended to replace and rehabilitate fixed guideway systems and high intensity motorbus systems. Eligible projects include the replacement and rehabilitation of rolling stock, tracks, line equipment and structure, signals and communications, power equipment and substations, passenger stations and terminals, security equipment and systems, maintenance facilities and equipment, operational support equipment (including

computer hardware and software), and development and implementation of transit asset management plans.

FTA apportions state of good repair funds to designated recipients in the UZAs according to a statutory formula. The high intensity fixed guideway formula applies to fixed guideway projects using and occupying a separate right-of-way for the exclusive use of public transportation that uses rail, a fixed catenary system, a passenger ferry system, a BRT system and comprises: (1) a modified version of the formula used under the now repealed fixed guideway rail modernization program, and (2) vehicle revenue miles and directional route miles that are attributable to a UZA. High intensity motorbus apportionments are 60 percent based on vehicle revenue miles and 40 percent based on directional route miles.

Additional information on the Section 5337 State of Good Repair Formula Program is available in FTA Circular 5300.1, "State of Good Repair Grant Program: Guidance and Application Instructions."

(12) Grants for Buses and Bus Facilities (Section 5339).

The Section 5339 Bus and Bus Facilities Program provides federal assistance to the states and UZAs for bus-related capital projects. It includes both a formula and discretionary program.

Under the Section 5339 Bus and Bus Facilities formula program, a portion of the federal assistance is allocated through an initial national distribution to states. The remaining funds are apportioned consistent with the formula under Section 5336, other than subsection 5336(b), to states and UZAs on the basis of population, vehicle revenue miles, and passenger miles. The FAST Act also includes a provision establishing a pilot program permitting designated recipients to participate in state pools of formula funding.

The FAST Act also provided for a bus and bus facilities competitive grant program, with a portion set aside for low and no emission grants.

Additional information on the Section 5339 Bus and Bus Facilities Formula Program, including transfer provisions to Section 5307, can be found in FTA Circular 5100.1, "Bus and Bus Facilities Program: Guidance and Application Instructions."

(13) Transit-Oriented Development Planning Pilot Program.

The Transit-Oriented Development Planning Pilot Program was established by Section 20005(b) of MAP-21. This program provides federal assistance to advance planning efforts that support transit-oriented development (TOD) associated with new fixed guideway and core capacity improvement projects, as defined under Section 5309. TOD focuses growth around transit stations to improve the resiliency and reliability of the transportation system, promote ridership, promote affordable housing near transit, revitalize downtown centers and neighborhoods, encourage local economic development, tourism and natural risk reduction.

Federal assistance under Section 5307 may be used to support planning projects that receive federal assistance under this program, or may be used for capital projects relating to TOD projects.

(14) Research, Development, Demonstration, Deployment, Cooperative Research, Technical Assistance and Standards Development, and Human Resources and Training Programs.

Requirements for the Public Transportation Innovation Programs under Section 5312 and Technical Assistance and Workforce Development Programs under Section5314, are included in the most current edition of FTA Circular 6100 "Research, Technical Assistance and Training Program: Application Instructions and Program Management Guidelines," rather than this Circular.

15) Grants For Positive Train Control (Section 3028).

Section 3028 of the FAST Act provides for $199,000,000 to be distributed on a competitive basis in FY 2017 to assist in the installation of positive train control systems required under section 20157 of title 49, United States Code. Financial assistance may be used for grants or credit assistance to pay the subsidy and administrative costs necessary to provide the entity Federal credit assistance under sections 502 through 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. § 801 *et seq.*, with respect to the project for which the grant was awarded. Recipients of 49 U.S.C. chapter 53 funding are eligible under this program.

c. ROLES AND RESPONSIBILITIES OF THE MANAGEMENT OF AWARDS. Recipients are responsible for the day-to-day management of their Awards that provide assistance for eligible activities or projects. FTA monitors Awards and the federally assisted projects thereunder to confirm that recipients establish and follow procedures that comply with federal requirements and the terms and conditions outlined. Chapter III of this circular describes the mechanics and requirements for administration of FTA Awards, Chapter IV describes the requirements for managing FTA Awards and Projects, and Chapter VI describes the requirements for the financial management of FTA Awards and Projects.

(1) Recipient Role. In addition to FTA's responsibility to monitor FTA Awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities to ensure compliance with applicable federal requirements. This includes the administration and management of the Award in compliance with federal regulations, the Grant or Cooperative Agreement, and applicable FTA circulars. A recipient is also responsible for federal assistance that "passes through" to a subrecipient. In general, submission of the annual Certifications and Assurances

stands in lieu of detailed FTA oversight before approval of an Award; however, the results of ongoing or routine FTA oversight activities also will be considered as applicable. Annual, independent, organization-wide audits, 2 CFR part 200, subpart F, "Audits", audits of recipients, and other recurring and specialized reviews provide FTA an opportunity to verify the recipient's Certifications and Assurances (*See* Chapter V, "Oversight," of this circular). The recipient's responsibilities include, but are not limited to, actions that:

(a) Demonstrate legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program,

(b) Provide administrative and management support of project implementation,

(c) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress,

(d) Ensure conformity to Grant and Cooperative Agreements, applicable statutes, codes, ordinances, and safety standards,

(e) Maintain project work schedules agreed to by FTA and the recipient and monitor activities under the Award to assure schedules are met and other performance goals are achieved,

(f) Keep expenditures within the latest approved Award Budget,

(g) Ensure compliance with FTA and federal requirements by agencies, consultants, contractors, and subcontractors working under approved third party contracts or inter-agency agreements,

(h) Request and withdraw federal assistance for eligible activities only in amounts and at times needed to make payments that are due and payable within three (3) business days and retain receipts to substantiate withdrawals,

(i) Account for project property and maintain property inventory records that contain all the elements required,

(j) Demonstrate and retain satisfactory continuing control over the use of project property,

(k) Demonstrate procedures for asset management and adequate maintenance of equipment and facilities,

(1) Ensure that an annual independent organization-wide audit is conducted in accordance with Office of Management and Budget (OMB) guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR part 200, which is incorporated by reference in 2 CFR part 1201,

(m) Prepare Force Account Plans and Cost Allocation Plans (CAPs) or Indirect Cost Proposals and submit and obtain approval if applicable, before incurring costs,

(n) Prepare required reports (*See* Chapter III, Section 3, "Reporting Requirements") for submission to FTA,

(o) Update and retain FTA required reports and records for availability during audits or oversight reviews,

(p) Ensure effective control and accountability are maintained for all Grants, Cooperative Agreements, and subagreements, cash, real and personal property, and other assets. Recipients and subrecipients must ensure that resources are properly used and safeguarded, and used solely for authorized purposes, and

(q) Obtain all necessary prior approvals and/or waivers before incurring costs or taking any requested actions.

(2) FTA Role - Headquarters. FTA Headquarters in Washington, DC, serves a broad, program-level role in the administration of FTA's federal assistance programs. FTA Headquarters performs the following functions:

(a) Provides overall policy and is primarily responsible for policy and program guidance for all FTA programs and ensures that programs are consistent with the law,

(b) Ensures consistent administration of programs by regional and metropolitan offices,

(c) Prepares and publishes annual apportionment of federal assistance to states and designated recipients,

(d) Develops and implements financial management procedures,

(e) Initiates and manages program-support activities, such as training sessions, webinars, courses, regional consistency training, and oversight reviews,

(f) Conducts national program reviews and evaluations,

(g) Carries out responsibility for national compliance with program requirements, and

(h) Develops national standard operating practices.

(3) FTA Role – Regional and Metropolitan Offices. FTA Regional and Metropolitan Offices are responsible for the day-to-day administration or oversight of Awards under programs covered by this Circular. Regional and metropolitan offices responsibilities include, but are not limited to, actions that:

(a) Review and approve applications for FTA assistance, amendments, and budget revisions, as necessary,

(b) Obligate and deobligate federal assistance,

(c) Work with recipients to implement and manage the programs and projects and ensure recipient compliance,

(d) Provide technical assistance,

(e) Receive the designated recipient's certifications and amendments to its Program of Projects (POP),

(f) Review Milestone Progress Reports (MPRs) and Federal Financial Reports (FFRs), as well as monitor and close Awards (including conducting quarterly review and other project management meetings),

(g) Conduct triennial reviews and other reviews as necessary, and

(h) In the case of cooperative agreements, provide substantial involvement in project activities; or, at a minimum, the right to redirect project activities.

3. CIVIL RIGHTS REQUIREMENTS. The recipient agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:

a. Nondiscrimination in Federal Public Transportation Programs. The recipient agrees to comply, and ensures the compliance of each third party contractor at any tier and each subrecipient at any tier under the project, with the provisions of 49 U.S.C. § 5332. These provisions prohibit discrimination on the basis of race, color, creed, national origin, sex, or age and prohibit discrimination in employment or business opportunity.

b. Nondiscrimination—Title VI. The recipient agrees to comply, and ensures the compliance of each third party contractor at any tier and each subrecipient at any tier of the project, including all direct and primary recipients must have and submit a Title VI program to FTA. The recipient agrees to comply with and ensure that the following requirements under Title VI of the Civil Rights Act of 1964:

(1) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance,

(2) DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21,

(3) FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients." This document provides FTA recipients and

subrecipients with guidance and instructions necessary to carry out DOT's Title VI regulations, 49 CFR part 21,

(4) DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. This Order describes the process that the Office of the Secretary of Transportation and each operating administration will use to incorporate environmental justice principles (as embodied in Executive Order 12898 on Environmental Justice) into existing programs, policies, and activities, and FTA Circular 4703.1 on Environmental Justice for FTA recipients, August 15, 2012, and

(5) Executive Order 13166 and DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons.(70 FR 74087, Dec. 14, 2005). This guidance clarifies the responsibilities of recipients of federal assistance from DOT and assists them in fulfilling their responsibilities to Limited English Proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations.

c. Equal Employment Opportunity. The recipient agrees to comply, and ensures the compliance of each third party contractor and each subrecipient at any tier of the project, with all Equal Employment Opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332, and FTA Circular 4704.1, "Equal Employment Program Guidelines for Grant Recipients" and any implementing requirements FTA may issue. Recipients that receive $1 million dollars in FTA assistance (or $250,000 in FTA planning assistance) and have 50 or more transit-related employees must have and submit an EEO program to FTA. The requirement for program submission applies to recipients that meet both criteria. FTA may ask recipients to verify they do not meet the criteria in lieu of a triennial program submission to FTA's Electronic Awards Management System.

d. Nondiscrimination on the Basis of Sex. The recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*, with implementing DOT implementing regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, and with any implementing directives that DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.

e. Nondiscrimination on the Basis of Age. The recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, and Health and Human Services' implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR part 90, which prohibit discrimination against individuals on the basis of age (40 years or older). In addition, the recipient agrees to comply with all applicable requirements of the Age Discrimination Act (ADEA), 29 U.S.C. §§ 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing

regulations, "Age Discrimination in Employment Act" 29 CFR part 1625, which prohibits discrimination against individuals on the basis of age.

f. Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and ensures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability:

(1) Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, prohibits discrimination on the basis of disability by recipients of federal financial assistance.

(2) Section 508 of the rehabilitation Act of 1973, (Section 508), as amended, 29 U.S.C. § 794(d), requires reports and other information prepared in electronic format developed in connection with a third party contract, whether as a contract end item or in compliance with contract administration provisions, must comply with the accessibility standards established under Architectural and Transportation Barriers Compliance Board (ATBCB) regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR part 1194.

(3) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities as well as imposes specific requirements on public and private providers of transportation.

(4) DOT regulations implementing Section 504 and the ADA include 49 CFR parts 27, 37, 38, and 39. Among other provisions, the regulations specify accessibility requirements for the design and construction of new transportation facilities; require that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs; require public entities, including a private non-profit entity of the state as a subrecipient providing fixed-route service, to provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service; and include service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.

(5) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance" which provides topically arranged explanations of the existing ADA requirements and information on implementing the requirements listed above.

(6) In addition, recipients of any FTA funds should be aware that they also have responsibilities under Titles I, II, III, IV, and V of the ADA in the areas of employment, public services, public accommodations, telecommunications, and other requirements, many of which are subject to regulations issued by other federal agencies.

g. Disadvantaged Business Enterprise (DBE). To the extent required by federal law, regulations, or requirements, the recipient agrees to take the following measures to make it possible for DBEs to participate in the project:

(1) The recipient must comply with Section 1101(b) of the FAST Act, which requires FTA to make available not less than 10 percent of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged persons. In order to receive federal assistance, recipients must comply with the DOT DBE regulations, *i.e.*, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, 49 CFR part 26, to the extent consistent with the FAST Act. Contracts funded in whole or in part with FTA funds and subject to FTA's procurement rule are also subject to the recipient's DBE regulations. Recipients must also include these contracts, to the extent of FTA funding, when determining whether the recipient meets the DBE threshold for goal setting, and if the threshold is met, a triennial DBE goal for FTA review.

(2) The DBE regulations at 49 CFR § 26.21(a)(2) require, among other things, that each FTA recipient have a DBE program if it receives planning, capital and/or operating assistance and will award prime contracts—the cumulative total value exceeding $250,000 in FTA funds in a federal fiscal year (excluding transit vehicle purchases). The regulations also require that recipients establish a triennial DBE goal to reflect anticipated DBE participation throughout the fiscal year. Recipients must report on progress towards meeting the triennial goal by submitting the Uniform Report of DBE Awards or Commitments and Payments by June 1 and December 1 of each year. FTA recipients are instructed by 49 CFR § 26.49 to require each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on a FTA-assisted transit vehicle procurement, certify that it has submitted a DBE goal to FTA. The list of DBE-certified TVMs can be found on FTA's website at www.fta.dot.gov/dbe.

(a) DBE Goals. DBE goal setting requirements apply to recipients that will award prime contracts (excluding vehicle purchases) exceeding $250,000 in FTA funds in any given FY. These recipients are required to provide DBE goals to FTA on an annual basis.

(b) Uniform Report of DBE Awards or Commitments and Payments. Recipients for which this part apply are required to submit the Uniform Report of DBE Awards or Commitments and Payments (the Semi-Annual Report) by June 1 and December 1 of each year in FTA's Electronic Awards Management System. By June 1, the recipient must report on all FTA-funded contracts awarded and/or completed and on ongoing DBE activity for the first half of the Federal fiscal year - October 1 to March 31. By December 1, the recipient must report on all FTA-funded contracts awarded and/or completed and on contracts awarded and/or completed and on ongoing DBE activity for the first half of the Federal fiscal year

- October 1 to March 31. By December 1, the recipient must report on all FTA-funded contracts awarded and/or completed and on ongoing DBE activity for the second half of the Federal fiscal year - April 1 to September 30.

(c) Reporting Transit Vehicle Manufacturers. Within 30 days, after entering into a contract for any vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been entered into FTA's electronic award and management system. Recipients must also report when exercising an option or a piggyback on an existing contract or ordering a vehicle from an authorized schedule.

(3) The recipient must not discriminate on the basis of race, color, sex, national origin, or disability in the award and performance of any third party contract, or subagreement supported with federal assistance derived from DOT or in the administration of its DBE program and will comply with the requirements of 49 CFR part 26. The recipient agrees to take all necessary and reasonable steps set forth in 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with federal assistance derived from DOT. As required by 49 CFR part 26 and approved by DOT, the recipient's DBE program is incorporated by reference and made part of the Grant or Cooperative Agreement. Implementation of this DBE program is a legal obligation, and that failure to carry out its terms shall be treated as a violation of the Grant or Cooperative Agreement. Upon notification by DOT to the recipient of a failure to implement its approved DBE program, DOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801 *et seq.*.

4. CROSS-CUTTING REQUIREMENTS. The recipient understands and agrees that it must comply with all applicable federal laws, regulations, and requirements, except to the extent that FTA determines otherwise, in writing.

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CHAPTER III

ADMINISTRATION OF THE AWARD

1. OVERVIEW. This chapter discusses the mechanics and requirements for post-award administration of the Grant or Cooperative Agreement (Award) after FTA has awarded federal assistance and the recipient has executed the Grant or Cooperative Agreement in FTA's electronic award and management system (EAMS). This chapter emphasizes the requirements associated with administering and managing an Award. Project management and asset management requirements are described in Chapter IV.

   In order to understand better the sequence of actions and the related administrative requirements, the life cycle leading to an Award is outlined in broad terms, with the pre-award and post-award phases separated.

   During the pre-award phase, FTA performs various actions, including soliciting applications (whether formally through a NOFA or informally), reviewing and selecting successful proposals, as well as creating administrative and fiscal accounts, such as assigning the federal award identification number (FAIN), other reference numbers, and reserving federal assistance. The applicant is responsible for drafting a proposal in response to the requirements of the solicitation, preparing related documents, and submitting the application in EAMS. The pre-award phase ends when FTA obligates federal assistance for the project(s) and related activities to be supported through the Award as described in the application and the recipient executes that Award.

   Once the Award is executed, the applicant becomes the recipient and the post-award phase begins. During this phase, the recipient implements each project and related activities supported under its Award, administers its Award based on the terms and conditions identified in the Grant or Cooperative Agreement that accompany the Award, and works with FTA to complete the Award within its Award Budget and on schedule. FTA is responsible for monitoring the Award and assisting in the effective management of the terms of the accompanying Grant or Cooperative Agreement, including reviewing required reports and modification requests.

   Once the period of performance has ended, the closeout of the Award can begin. The Award is considered closed when the recipient has completed and submitted the documents required for closeout in the EAMS and FTA has accepted these documents. These documents and reports include the recipient's final reconciled budget and final Federal Financial Report (FFR) and Milestone Progress Report (MPR) in the EAMS. Records should be maintained as provided in the established retention schedule.

2. APPLICATION PROCESS. The Federal Transit Administration's (FTA's) pre-award and program-specific circulars describe the application process and requirements. Refer to these circulars for instructions for completing an application. For a full listing of FTA program circulars as of the date of publication of this circular, *see* Appendix A of this circular or visit **www.fta.dot.gov**.

FTA provides a streamlined electronic interface between recipients and FTA that allows complete electronic application submission, review, approval, and management of all Awards. The applicant must use EAMS to apply for federal assistance from FTA, manage its Grant or Cooperative Agreement from award to closeout, file the required financial status reports and milestone progress reports, and submit its annual Certifications and Assurances. Please contact your FTA point of contact for information regarding FTA's current EAMS.

Each Grant or Cooperative Agreement includes, at a minimum:

a. Description of the overall Award scope of work summarizing each Project and related activities that will receive federal assistance under the Award as stated in the Award Budget,

b. Individual narrative, budgets, and schedules for each activity supported under the Award,

c. The Award Budget, consists of all the costs associated with the scope of work encompassed in the Award.

d. Any special conditions within the Agreement or incorporated by reference are made part of the Agreement, such as Department of Labor requirements,

e. The period of performance of the entire Award delineated by the start and end dates of the Award during which time projects and related activities are expected to be completed and the federal assistance, therefore, is fully expended,

f. The intended use of pre-award authority or the conditions for using pre-award authority, when pre-award authority may be available for incurring project-related costs identified at the time of application before FTA electronically signs, or obligates, the Award, and

g. Any other documents attached to the application, incorporated by reference and made part of each Grant or Cooperative Agreement that apply to the Award including the Master Agreement, the Recipient's Certifications and Assurances submitted each fiscal year, and other relevant documents.

NOTE: Once FTA obligates federal assistance through the Award, the applicant must execute the Award in the EAMS within 90 days; otherwise FTA may withdraw its Award. Once the Award is executed, it is considered "active" and the recipient must comply with post-award administration requirements.

3. REPORTING REQUIREMENTS. When the Award is active, the recipient must comply with post-award reporting requirements. FTA's policy for reporting requirements may vary depending on the size of the recipient or the type or amount of federal assistance the recipient receives. The Award may include special reporting requirements. These are typically identified by program and may be included in *Federal Register* notices, apportionment notices, and program circulars. Please contact your FTA point of contact with questions regarding the applicability of the following reporting requirements.

a. General Reporting Purpose. The FTA post-award review may consider whether the following factors are progressing as outlined in the Grant or Cooperative Agreement:

(1) The purposes of the Award are being achieved,

(2) The Award is progressing as scheduled and within its Award Budget,

(3) The recipient is demonstrating competence and control in implementing the scope of work encompassed by the Award, and

(4) The Award meets all program requirements, and all performance measures are being captured.

FTA monitors projects and related activities under the Award to ensure proper recipient stewardship of federal assistance and compliance with applicable laws, regulations, and requirements. FTA's monitoring continues throughout the period of performance, which is defined as the earliest milestone date and the latest milestone date across the various Projects encompassed by the Award. Should a problem develop, FTA may become involved to assist in its resolution. FTA also must be able to report on program results, industry trends, and its own oversight responsibilities. Recipients submit the information FTA needs for program forecasting and management through the FFR and narrative MPR detailing progress, significant events, relevant activities, and any changes to or variances in the Award Budget or schedule.

With respect to the level of detail required for these reports, FTA treats all approved activity line items (ALIs) alike. Thus, an activity supported under the Award must be presented in the reports in sufficient detail that important information is not lost in the aggregation. For example, the number of full-size buses supported under the Award must not be reported together with vans under the scope code for "rolling stock," but instead should be reported separately under the applicable ALI. FTA staff is available to meet with recipients to determine and agree on the appropriate level of reporting detail and formats. This will ensure that FTA has the information needed to manage its overall program.

All recipients should report significant developments or changes as they occur during the year, including any problems, delays, or adverse conditions that may materially impair the ability to meet the objective(s) of the Award, as well as any favorable developments that may enable meeting time schedules and objectives sooner or at a cost substantially lower than expected in the FFRs.

Recipients must file their FFRs and MPRs through the EAMS. Recipients may attach supplemental information accompanying the FFRs and MPRs; however, attachments may not be submitted in lieu of completing and submitting the FFR and MPR via the EAMS.

FTA may withhold payment for failure to submit either FFRs or MPRs in a timely manner. In limited instances, FTA may grant extensions of report due dates for good cause. For quarterly reporters, an extension may be granted up to the day prior to the next

quarter reporting cycle (for example, a report due on January 30, may receive an extension with a due date no later than March 30. This is necessary to ensure information is captured for the next reporting cycle beginning on April 1). Extensions may not be granted for recipients required to report monthly. Annual reporters must report by October 30. FTA, or the recipient, may request to make modifications to a submitted report; however, any corrections must be completed and resubmitted within 60 days after the original due date. This does not apply to monthly reporters. Annual reporters may be granted an additional 60 days for justified reason (following the same format for quarterly reporters).

Please contact your regional or metropolitan office for questions regarding any reporting requirements or report due dates.

b. Reports of Significant Events. Unforeseen events that impact the schedule, cost, capacity, usefulness, or purpose of the Award, including the terms and conditions applicable to the Award should be reported to FTA immediately after detection and then reflected in the next Milestone Progress Report. Special reports should be submitted when:

(1) Problems, delays, or adverse conditions will affect the recipient's ability to achieve the objectives of the Award within the scheduled time period or Award Budget. The report should discuss actions taken and/or contemplated and any federal assistance needed to resolve the situation.

(2) Favorable developments will enable the recipient to achieve project goals/complete project activities ahead of schedule or at lower cost.

(3) Local events occur that affect transit in general, such as bond issues, a major service change, a major new employer, a loss of employer, public policy, or transit district in news.

(4) Areas of non-compliance and potential conflicts of interest are identified.

c. Federal Financial Report (FFR). FTA's electronic FFR report is consistent with and includes the same information identified in OMB's Standard Form FFR (SF FFR). A recipient must submit an FFR for each active Award. The FFR accompanies the MPR (described below) and is used to monitor the federal assistance awarded. The purpose of the FFR is to provide a current, complete, and accurate financial picture of the Award. This report is submitted electronically through the EAMS and must be prepared on the accrual basis of accounting; that is, income is recorded when earned instead of when received, and expenses are recorded when incurred instead of when paid. The FFR may not be prepared on the cash basis of accounting, even though a recipient may keep its books on the cash basis during its accounting year. If this is the case, at the submission of the FFR, the recipient must prepare the necessary accruals and submit the FFR on the accrual basis of accounting.

The FFR must contain the following elements:

(1) All financial facts (*e.g.*, expenditures and obligations) relating to the Award (scope of work and supporting activities); the purpose of each financial report and applicable reporting period should be completely and clearly displayed in the reports.

(2) Reported financial data should be accurate to the last Award Budget (this may be the initial award, or last revision to the Award Budget or amendment to the Award) and the reporting period. The requirement for accuracy does not rule out inclusion of reasonable estimates when precise measurement is impractical, uneconomical, unnecessary, or conducive to delay. Financial data reported may reconcile data included in the prior report, and must be explained in the explanation/remarks of the report.

(3) Financial reports should be based on the required supporting documentation maintained in the recipient's official financial management system that produces information that objectively discloses financial aspects of events or transactions.

(4) Financial data reported should be derived from accounts that are maintained on a consistent, periodic basis; material changes in accounting policies or methods and their effect must be clearly explained.

(5) Reporting terminology used in financial reports to FTA should be consistent with receipt and expense classifications included in the latest Award.

(6) The recipient is responsible for indicating whether or not it is charging indirect costs to the Award at the time of application. If the recipient is charging indirect costs to the Award, the recipient is responsible for having an approved indirect cost rate and cost allocation plan approved by the cognizant agency on file, and making it available to FTA. The recipient must report on related indirect expenditures.

(7) The recipient must provide financial information related to the FFR categories: Federal Cash, Recipient Share, Unliquidated Obligations, and Program Income.

(8) The recipient must provide remarks to help explain the report, in particular any reconciliation (*e.g.*, refunds) identified in the report. The recipient must also certify or attest that the information provided is accurate.

d. Milestone/Progress Reports. The MPRs must be submitted for each active Award. The MPR is the primary written communication between the recipient and FTA. This report must be submitted electronically. If only operating assistance is included in the Award, the reporting requirements are limited to the actual dates when all federal assistance has been expended.

The information provided in MPR reports should be as complete as possible, highlighting progress toward project objectives and any potential problem areas.

The MPR must reflect the Period of Performance of the Award. This consists of the start date, which is defined as the earliest milestone across the Projects within an Award, and the end date, which is defined as the latest milestone across the Projects within an Award.

Each MPR must include the following data as appropriate:

(1) The current status, at a minimum, of each milestone that has passed during the prior reporting period, within an active Award. FTA, at its discretion, may request a recipient to update each milestone within an active Award. MPRs should identify:

(a) The actual completion dates for any milestones completed during the reporting period, and

(b) Any revised dates when any original (or last revised) completion dates were not met.

(2) A narrative of the activity status, any problems encountered in implementation, specification preparation, bid solicitation, resolution of protests, and third party contract awards.

(3) A detailed discussion of all Award Budget or schedule changes.

(4) An explanation of why scheduled milestones or completion dates were not met.

(5) Identification of problem areas and a narrative on how the problems will be solved.

(6) A discussion of the expected impacts and the efforts to recover from the delays.

(7) An analysis of each significant project cost variance: Completion and acceptance of equipment and construction or other work should be discussed, together with a breakout of the costs incurred and those costs required to complete the project. Use quantitative measures, such as hours worked, sections completed, or units delivered.

(8) A list of all outstanding claims exceeding $100,000, and all claims settled during the reporting period. This list should be accompanied by a brief description, estimated costs, and the reasons for the claims.

(9) A list of all potential and executed change orders and amounts exceeding $100,000, pending or settled, during the reporting period. This list should be accompanied by a brief description. Identification of change orders does not imply notification, acceptance, or approval of budgetary changes that might be required.

(10) A list of claims or litigation involving third party contracts and potential third party contracts that:

(a) Have a value exceeding $100,000,

(b) Involve a controversial matter, irrespective of amount, or

(c) Involve a highly publicized matter, irrespective of amount.

(11) A list of all real property acquisition actions, including just compensation, property(ies) under litigation, administrative settlements, and condemnation for each parcel during the reporting period.

(12) All rolling stock ALIs must include a milestone for Contract Award and the recipient must update the milestone with the successful Transit Vehicle Manufacturer (TVM) bidder information in the first report following award.

e. Report Due Dates. For FFRs and MPRs, the following reporting dates apply:

(1) Recipients located in urbanized areas of 200,000 or more population. FFRs and MPRs are due to FTA within 30 days after the end of each quarter, *i.e.*, by January 30, April 30, July 30, and October 30. The FTA regional or metropolitan office may request more frequent reporting or additional reports if circumstances warrant additional reporting.

(2) Recipients located in urbanized areas of less than 200,000 population. FFRs and MPRs must be submitted and are due October 30, one month after the federal fiscal year (FY) ends. The FTA regional or metropolitan office may request more frequent reporting or additional reports if circumstances warrant additional reporting.

(3)FTA may utilize a risk based approach to change the frequency of reporting requirements for a particular Award or recipient. This will be noted in the Grant Agreement or Cooperative Agreement.

(4) Exceptions:

(a) Section 5309 Grants: All grant recipients, regardless of location and population area, are required to submit quarterly reports in the EAMS according to the dates in Subsection 3.e.(1) above when grants include construction of facility.

(b) State Departments of Transportation (State DOTs): State DOTs are required to report annually for all state administered programs; this includes Sections 5303, 5304, 5307 (Governor's Apportionment), 5310, 5311, former 5316, and former 5317 Programs. The exception described in the preceding paragraph applies to the State DOTs.

(c) If the provisions of this FTA Circular 5010.1 differ from the provisions of the applicable FTA Programmatic Circular, the Program Circular takes precedence. FTA at its discretion may always require more stringent reporting or specialized reports. Depending on project complexity, at its discretion, FTA may also request other special reports or quarterly project management meetings.

f. Federal Funding Accountability and Transparency Act (FFATA) Subaward and Executive Compensation Reporting. Recipients awarded new Federal assistance greater

than or equal to $25,000 as of October 1, 2010, are subject to FFATA subaward and executive compensation reporting requirements as outlined in the Office of Management and Budget's guidance issued August 27, 2010. These recipients must file an FFATA subaward report by the end of the month following the month in which the recipient awards any subaward greater than or equal to $25,000. Additionally, all recipients must report the names and compensation of their five most highly compensated officers, and first-tier subrecipients must report the names and compensation of their five most highly compensated officers, if in the preceding fiscal year they received 80 percent or more of their annual gross revenues in Federal awards; and $25,000 or more in annual gross revenues from Federal awards; and the public does not have access to this information about the compensation of the senior executives of those recipients or subrecipients through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), § 78o(d), or section 6104 of the Internal Revenue Code of 1986.

Instructions and the FFATA Subaward Reporting System (FSRS) can be found at: https://www.fsrs.gov.

g. Reports and Other Materials Produced by the Recipient. All reports, presentations, and other products resulting from FTA sponsorship reports must contain the following acknowledgment and disclaimer:

DISCLAIMER NOTICE

This document is disseminated under the sponsorship of the United States Department of Transportation, Federal Transit Administration, in the interest of information exchange. The United States government assumes no liability for the contents or use thereof.

The United States government does not endorse products or manufacturers. Any trade or manufacturers' names appear herein solely because they are considered essential to the contents of the report.

h. Associated Transit Improvement Reports. Associated Transit Improvement Reports (also, Transit Enhancement Reports for Awards made before MAP-21 was signed into law) must be submitted by recipients with populations of 200,000 or more that receive federal assistance under the Urbanized Area Formula Program (Section 5307). Recipients of this federal assistance are required by Section 5307(c)(1)(K) to submit a report listing the associated transit improvement projects carried out during the previous FY with that federal assistance including the amounts expended. Refer to FTA Circular 9030.1 (Urbanized Area Formula Program: Program Guidance and Application Instructions) for reporting requirements. Certification that the Associated Transit Improvement Report or Transit Enhancement Report has been submitted is required as part of the Annual List of Certifications and Assurances.

i. Civil Rights Reports. Recipients, as a prerequisite for federal assistance, must comply with certain civil rights requirements and routinely evaluate if their compliance requirements change.

(1) Title VI. Recipients must submit, on a triennial basis, a report of their compliance with the objectives of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients." FTA Circular 4702.1 provides details on the contents of compliance reports.

(2) Disadvantaged Business Enterprise (DBE) Program. The DBE regulations, at 49 CFR § 26.21(a)(2), require, among other things, that each FTA recipient have a DBE program if it receives planning, capital and/or operating assistance and will award prime contracts—the cumulative total value exceeding $250,000 in FTA assistance in a federal fiscal year (excluding transit vehicle purchases). The regulations also require that recipients establish a triennial DBE goal to reflect anticipated DBE participation throughout the fiscal year. FTA recipients are instructed by 49 CFR § 26.49 to require each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on a FTA-assisted transit vehicle procurement , certify that it has submitted a DBE goal to FTA. The list of DBE-certified TVMs can be found on FTA's website at www.fta.dot.gov/dbe:

(a) DBE Goals. DBE goal setting requirements apply to recipients that will award prime contracts (excluding vehicle purchases) exceeding $250,000 in FTA funds in any given FY. These recipients are required to provide DBE goals to FTA on an annual basis, and

(b) Uniform Report of DBE Awards or Commitments and Payments. Recipients for which this part apply are required to submit the Uniform Report of DBE Awards or Commitments and Payments (the Semi-Annual Report) by June 1 and December 1 of each year in FTA's Electronic Awards Management System. By June 1, the recipient must report on all FTA-funded contracts awarded and/or completed and on ongoing DBE activity for the first half of the Federal fiscal year - October 1 to March 31. By December 1, the recipient must report all FTA-funded contracts awarded and/or completed and on contracts awarded and/or completed and on ongoing DBE activity for the first half of the Federal fiscal year - October 1 to March 31. By December 1, the recipient must report all FTA-funded contracts awarded and/or completed and on ongoing DBE activity for the second half of the Federal fiscal year - April 1 to September 30, and

(c) Reporting Transit Vehicle Manufacturers. Within 30 days, after entering into a contract for any vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract. Additionally, the next MPR after the contract is awarded should include the name of the successful bidder. Recipients must also report when exercising an option or a piggyback on an existing contract or ordering a vehicle from an authorized schedule.

(3) Equal Employment Opportunity (EEO). Recipients covered under FTA Circular 4704.1 which addresses EEO matters must submit triennial reports on their compliance with this circular. FTA EEO program reporting requirements apply to recipients that employ 50 or more transit-related employees and receive capital or operating assistance in excess of $1 million, or receive $250,000 or more from FTA for planning purposes. FTA Circular 4704.1 provides details on the contents of EEO compliance reports.

j. National Transit Database (NTD) Reporting. Congress established the NTD to be the Nation's primary source for information and statistics pertaining to the transit systems within the United States. NTD data is used to support numerous DOT programs and to "help meet the needs of individual public transportation systems, the United States Government, state and local governments, and the public for information on which to base public transportation service planning." 49 U.S.C. § 5335. A recipient or subrecipient of federal assistance from FTA under the Urbanized Area Formula Program (Section 5307) or the Formula Program for Rural Areas (Section 5311) is required by statute to submit data to the NTD.

The legislative authority for the NTD is 49 U.S.C. § 5335. FTA implemented NTD requirements through the NTD Rule, 49 CFR part 630. A recipient or subrecipient of federal assistance from FTA that is required to report to the NTD must provide a complete report of all transit operations, regardless of whether those operations are or are not financed in whole or in part by FTA. Financial information reported to the NTD must be reported in accordance with the Uniform System of Accounts (USOA). The complete reporting requirements for the NTD, along with information on due dates, extensions, and waivers can be found in the current versions of the NTD Reporting Manuals. The NTD Rule, the USOA, and the latest versions of the NTD Reporting Manuals can be found on FTA's NTD website at **http://www.ntdprogram.gov/**.

(1) Annual Reports. A recipient or subrecipient of federal assistance under FTA's Urbanized Area Formula Program (Section 5307) or Rural Areas Formula Program (Section 5311) is required by law to report to the NTD. A recipient of the Urbanized Area Formula Program assistance must also submit monthly operations reports to the Monthly Module (2) and monthly reports to the Safety and Security Module.

(2) Annual Report (Urbanized). A recipient or subrecipient of Section 5307 assistance must annually report financial and non-financial data in accordance with the USOA as well as other data on operations, organizational relationships, available resources, and capital assets. The NTD Annual Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.

(3) Rural Report (Other than Urbanized). A recipient or subrecipient of Section 5311 assistance must annually report financial and non-financial data in accordance with the USOA as well as other data on operations, organizational relationships, available resources, and capital assets. The recipient also needs to report on behalf of its

subrecipients. The NTD Rural Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.

(4) Monthly Report (Urbanized). A recipient or subrecipient of federal assistance under Section 5307 is required to file monthly reports on transit operations to the NTD. These monthly reports include information on unlinked passenger trips, vehicle revenue miles, vehicle revenue hours, vehicles operated in maximum service, and regular service days for each month. The NTD Monthly Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.

(5) Safety and Security Report (Urbanized). A recipient or subrecipient of federal assistance under Section 5307 is required to file monthly safety and security reports. These monthly reports include information on fatalities, injuries, collisions, derailments, fires, hazardous material spills, evacuations, arrests, and significant security events. The NTD Safety & Security Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.

k. Quarterly Reports for Major Capital Projects. Recipients must submit a quarterly project budget and project schedule for Major Capital projects.

4. MODIFICATIONS TO THE AWARD. At times, it may be necessary to modify the Award by revising the Award Budget or amending the Grant or Cooperative Agreement. The recipient is responsible for controlling and monitoring each project and related activities under the Award to ensure that all projects and related activities are carried out in accordance with the Award Budget.

Each federal assistance program has specific requirements that are included in each FTA program circular that should be referenced before contemplating a modification to the Award. For example, for federal assistance under Section 5307, each associated transit improvement (previously transit enhancement) must be used for activities eligible under the statute authorizing its federal assistance. Another example is that federal assistance for the Americans with Disabilities Act (ADA) complementary paratransit service as a capital project may not exceed 10 percent of its annual apportionment under Section 5307 and 5311. Sections 5310 and 5311 also have specific requirements for modifications to Awards that are addressed in the FTA program application circulars. Federal assistance flexed from other programs, such as the Congestion Mitigation and Air Quality (CMAQ) Improvement Program or the Surface Transportation Program (STP), may have additional requirements that are addressed in other guidance that must be considered before modifying the Award.

The manner in which the Award Budget is initially structured during the application phase can facilitate or impede project management, particularly when unforeseen events require changes to the Award. The type of modification will also depend on how it impacts/alters the scope(s) of work contained within the Award. A change in scope can be characterized as

when the recipient proposes to change one or more of the following: subawards, significant changes to the Award Budget, beneficiaries of the award, location/place of performance, or changes other aspects of the activities identified in the approved application/Grant or Cooperative Agreement.

The scope of work means all Projects and activities required to satisfy the agreement of the Award. This can be described as the group of activities the applicant/recipient agrees to complete as part of the award, within a specified budget and specified timeline.

The individual Scope Codes of the Activity Line Item (ALI) Tree does not equate to the scope of work of the Award. Scope Codes in the FTA "ALI Tree" are used to define categories of related activities. The ALIs are activities in the Tree and are associated with only one Scope Code and are used to define the scope(s) of work of a Project and/or Award. One project can comprise an Award, or it may have multiple projects each with its own scope of work. The two projects then comprise the scope of work of the Award.

There are three ways to modify the Award: (1) through a revision to the Award Budget, (2) through an Administrative Amendment, or (3) through an Amendment. The recipient should contact the FTA regional or metropolitan office for questions relating to requests for a modification to its Award, including which type of modification is appropriate for the proposed action. Modifications are electronically submitted, reviewed, and approved in FTA's EAMS.

All post-award modifications must be approved to remain in active status with a current Award Budget as incorporated by reference and made part of the executed Grant or Cooperative Agreement to ensure the recipient can seek reimbursement.

b. Award Budget Revisions

(1) General. A revision to the Award Budget may be made as long as there is no change to the purpose and the scope of work of the Award and its Project(s) and its associated activities, and no change to the type of and/or amount of federal assistance awarded, regardless of the FY for which the federal assistance was appropriated. Whether a revision to the Award Budget may be permitted or whether an Amendment to the Grant or Cooperative Agreement will be necessary depends on the effect of the proposed change(s). A revision to the Award Budget may impact the scope of work. A change in scope of work can be characterized as when the recipient proposes to change one or more of the following: subawards, significant changes to the Award Budget, beneficiaries of the award, location/place of performance, or changes other aspects of the activities identified in the approved application/Award Agreement.

FTA will ultimately make the final decision regarding the course of action to incorporate the proposed changes. Recipients should consider the following when determining if the post-award action meets the criteria for a revision to the Award Budget.

(a) Revisions to the Award Budget are generally changes to ALI amounts, when the same funding source is applied or when minor adjustments are made to descriptions of activities. For example, if an ALI is added to an existing scope to delineate better the existing activities or to reallocate funds between existing ALIs when one ALI has completed its scope of work and a surplus of funds remains available, then a revision to the Award Budget may be appropriate.

However, if the proposed action results in the ALI being reduced to zero, and the Scope Code is also zeroed out, then the action is an amendment.

(b) Revisions to an Award Budget must be consistent with the activities contained in an approved Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP) included within your current Award, if applicable.

(c) Revisions to an Award Budget may not alter the National Environmental Policy Act (NEPA) determinations pertaining to the current award. An amendment would be required if a post-award action changes the location of the activities and it changes the original NEPA determination, and/or if the action changes the original intended beneficiaries. Note that, the addition of an activity to an existing scope code may be a revision to the Award Budget when it can be satisfied under the current NEPA of the Award, or it has satisfied NEPA independently.

(2) Procedures. A revision to an Award Budget must be submitted electronically through FTA's EAMS. A request for a revision to an Award Budget request must include a reason for the revision. Any revision to an existing ALI in an Award Budget must be accompanied by a brief explanation to explain the impact of the change on the project, and the Grant or Cooperative Agreement as a whole. If necessary, additional information may be attached in the EAMS. The FTA reviewer will return an incomplete revision to an Award Budget to the recipient for inclusion of additional information.

Revisions to an Award Budget may be performed to active Awards regardless of whether they were initially awarded under an older FTA EAMS system (i.e., TEAM or TrAMS).

Revisions to the Award Budget may be sent to the Department of Labor (DOL) for informational purposes but the labor protection arrangements for the original Award will apply to any modifications without further DOL certification.

In certain circumstances, a recipient must request FTA concurrence in a revision to an Award Budget before incurring costs. The request must explain and justify the proposed revision and outline the proposed changes to confirm it is a valid revision to the Award Budget and not an Amendment. FTA must document its review and concurrence before the recipient can incur costs associated with the proposed change. That concurrence document must later be attached to the formal budget request submitted in the EAMS. The recipient must be proactive and submit the formal

request for a revision to the Award Budget in the EAMS (including the prior approval document) for formal FTA approval.

FTA prior approval is required when the proposed revision to an Award Budget meets any of the following criteria:

(a) For construction, when:

1 The revision results from changes in the scope or the objective of the project or program, or

2 A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in 2 CFR part 200, subpart E—Cost Principles.

(b) For equipment, when the federal share of the Award exceeds the simplified acquisition threshold ($150,000, at the time of publication of this circular) and the cumulative amount of change exceeds 20 percent of total federal assistance allocated from the current approved Award Budget, provided it does not alter the scope of work of the Award.

(c) The federal assistance source is the same and is transferred between ALIs, within each Project or across the Projects with different federal matching ratios. For example, moving federal assistance from a capital activity with a match ratio of 80/20 to an operating activity with a match ratio of 50/50 requires a revision to the Award Budget. Certain revisions may require a financial purpose code (FPC) transfer (*e.g.*, prior TEAM grants and cooperative agreements that are migrated to TrAMS).

(d) Changing the federal share of an existing ALI, such as changing an ALI from 80/20 to 85/15 to account for compliance with ADA or CAA requirements provided this action does not increase the federal or non-federal shares; otherwise it is an amendment.

(e) The addition of an ALI to an existing scope of work approved for the Award, provided that the request does not change the source or amount of federal assistance originally awarded or change the scope of work of the Award and its Projects.

Any change within an approved scope of work requires that the recipient affirm in its request for a revision to an Award Budget that the new activity is consistent with the approved STIP and, if applicable, has satisfied NEPA requirements. For example, if a construction management ALI was included for third party contractors, but now a portion of the funds will be used for force account construction management, the intended scope of work remains the same. If the addition of an activity included a scope of work to install/construct bus shelters, but the applicant desired to use a portion of the awarded funds now for the design

of the bus shelters, a revision to the Award Budget could be used to add that new related activity since it leads to the completion of the approved scope of work.

(f) An Award under an earmark or discretionary program has certain limitations and requirements when considering changes to the Award Budget. Therefore, before proceeding with any budgetary changes (Revision to an Award Budget or Amendment to the Grant or Cooperative Agreement), the recipient should notify its FTA point of contact first for direction.

(3) Financial Purpose Code (FPC) Transfers. When a revision to the Award Budget includes a transfer of federal assistance between capital/operating/planning activities, FTA must concur (approve) in the change in the EAMS before the recipient is able to draw down federal assistance for the changed purpose. The recipient should understand that a change in a FPC may result in a change to the overall non-federal share depending on the required matching ratios. **This is only applicable to federal assistance previously awarded under TEAM.**

(4) Period of Performance: Any changes to the Period of Performance, meaning the beginning or end date of the award, requires prior FTA approval. No new expenditures should be made beyond the end date of an Award.

(5) Rolling Stock Changes: A recipient must continue to meet FTA's rolling stock spare ratio requirements for any change in the number of revenue rolling stock. If the change in the number of the approved Award impacts its spare ratios, the recipient must validate the change in its Rolling Stock Status Report. FTA determines whether the proposed change is a revision to the Award Budget or constitutes an Amendment.

(6) Administrative Amendments to Awards. An Administrative Amendment is initiated by FTA and may only be used when there is no change to the scope of work, amount or purpose of the Award.

An Administrative Amendment may be used for the following reasons:

(a) To change or clarify the terms, conditions, or provisions of the Grant or Cooperative Agreement;

(b) To change the fiscal year or type of federal assistance obligated for the Award; or

(c) To deobligate federal assistance that is no longer needed to complete the approved project scope of work or purpose, without closing the Award.

(8) Amendments to Awards.

(a) General. An Amendment to the Grant or Cooperative Agreement is required when there is either a change in the scope of work or addition of federal assistance to an existing Award (regardless if the source of assistance is the same or different). An Amendment is required if there are changes to the scope of work that necessitate a

change in the distribution of federal assistance across scope codes or activities. Amendments will be required when the Award includes multiple sources of financial assistance and the action requires the addition of a new Scope to a Project.

A new amendment to a Grant or Cooperative Agreement must meet the same application requirements as a request for a new Award. Each Amendment is subject to DOL certification to the extent required by law.

(b) Procedure. All amendments must be submitted electronically through FTA's EAMS. Amendments to the Grant or Cooperative Agreement require a revised Grant or Cooperative Agreement and revised Award Budget, and may require additional milestones adjusting the schedule of one or more Projects therein, or a change in the amount or program/source(s) of federal assistance obligated for the Award. The Amendment must meet the same requirements as a request for a new Award except that the recipient need not resubmit portions of the application for its original Award that are unaffected by the change.

The recipient must describe the reason for the Amendment and the changes to the Grant or Cooperative Agreement, include a detailed description of each change and a revised Award Budget, and update the period of performance if applicable (this may require additional milestones to revise the end date of Award Agreement). To delineate the Amendment, the recipient should include a header (*e.g.*, "Amendment #1,") in each narrative section, including the Executive Summary, the Project narrative and the extended details of the associated ALI.

FTA requires an Amendment to the Grant or Cooperative Agreement if the request changes the scope of work of the Award. *See* Appendix X for examples. Amendments to the Grant or Cooperative Agreement include (note: this list is not exhaustive):

1 A change in the location or in the quantity of items to be purchased or constructed that substantially changes the purpose or intent of the Award.

2 The addition of a new Project to the Award, or the division of an existing Project into multiple Projects, or deletion of a Project included in the Award.

3 The addition or deletion of a scope code to an existing Project.

4 The addition of an ALI to an existing scope code when it adds new independent scope to the Project, meaning, it is not associated with/or support other existing activities included in the Award.

5 Change to Period of Performance, meaning, the beginning and end date of the award. The Period of Performance may only be modified by amending the Grant or Cooperative Agreement. No new expenditures should be made beyond the completion date of an Award.

6 The request will increase or decrease the total amount of the Award.

7 The federal program authorizing the Award is substituted (deobligate/reobligate) for any Scope even if the total amount remains the same.

8 The action will add a second program of federal assistance to the Award, even if the total federal award amount remains the same.

(c) Deobligation. A change in federal assistance may occur when a recipient elects to deobligate one source of federal assistance and apply a different source; this may be part of the amount or the whole amount.

If the scope of work is unchanged and the only action is the deobligation of federal assistance, an Administrative Amendment may be used to process the modification to the Grant or Cooperative Agreement. *See* Chapter III, subsection 4.b, "Administrative Amendment," above.

(d) Change to Discretionary Awards or Earmarks. A change to an Award resulting from a congressional earmark or a competitively selected discretionary program, must be consistent with the original intent of the congressional language authorizing the Award or activities included in the original discretionary application as outlined in the applicable Notice of Award. For example, if the congressional earmark is only for a facility, an Amendment cannot add a scope for vehicles without explicit direction from Congress to FTA to change the earmark. Likewise, discretionary Awards require concurrence from the FTA Headquarters and/or Office of the Secretary. Before initiating an Amendment, contact your FTA Regional Office for assistance in making this determination.

(e) Transfer of Assets. Any transfer of an asset that has an active federal interest (procured under an FTA Award), must be documented to demonstrate acceptance and the responsibility for continuing control of that asset over its useful life. Since FTA retains an interest in that asset, an Amendment to an active Award is necessary to capture the transfer of that asset. The balance of useful life should be referenced, and if the asset is rolling stock, an update to its fleet information in the EAMS and its fleet management/status plan is required. An Amendment is not required if the asset is transferred after its useful life as defined in the original Award used for the purchase of the asset. In this case, the recipient of the asset should document the transfer of the federally funded asset and attach the document to the recipient's profile in FTA's EAMS. If the recipient is not a current federal recipient, contact your FTA Regional Office for assistance. At a minimum, in this situation, an agreement is needed between the two entities to document acceptance of the transfer of that asset and the continued compliance with the federal requirements which are bound to those assets. A copy of that document must be transmitted to the FTA Regional Office.

5. AWARD CLOSEOUT. Closeout, in general, is the term used to signify the process by which the recipient and FTA agree that all activities approved for the Award have been completed and the federal assistance awarded has been expended for eligible costs. FTA may initiate a closeout if it has determined the recipient has failed to comply with the terms of the Grant or Cooperative Agreement. Closeout, by either party, does not preclude FTA's ability to seek repayment or other remedies for a recipient's breach of the terms and conditions of the Grant or Cooperative Agreement.

   a. Closeout by Recipient. The recipient is responsible to initiate closeout of the Award, within 90 days after all approved activities are completed and/or the applicable federal assistance has been expended for all eligible costs. The recipient must initiate the closeout electronically, by submitting the following information in the EAMS, as part of the closeout process:

      (1) Confirmation that all activities are complete and information is provided about whether the closeout Amendment will deobligate any unexpended balance of federal assistance,

      (2) A list of property acquired or improved in support of the Award that will continue to be within the purview of the Grant or Cooperative Agreement,

      (3) A final, reconciled Award Budget reflecting actual Project costs by scope code and activity, reflecting adjustments to the federal and non-federal amounts,

      (4) A final FFR, consistent with the reconciled Award Budget (*e.g.*, deobligation),

      (5) A final narrative MPR indicating the actual completion date of each ALI and a discussion of each ALI contained in the final Award Budget, and

      (6) Any other documentation or reports required as part of the terms and conditions of the Grant or Cooperative Agreement.

   b. Closeout by FTA. FTA may unilaterally initiate closeout of the Award. Circumstances that could cause FTA to close the Award at any time, include:

      (1) The recipient's failure to comply with the terms or conditions of the Grant or Cooperative Agreement or other federal requirements,

      (2) Continuation of the Award would not produce results commensurate with further expenditure of funds,

      (3) Federal assistance is no longer needed to accomplish the purpose of the Award,

      (4) Failure by the recipient to make reasonable progress to complete activities under the award for which federal assistance was awarded,

      (5) Failure by the recipient to execute the award agreement within 90 days of FTA's award, or

(6) FTA's determination that the project has been essentially completed and/or approved and the federal assistance awarded has been substantially drawn down.

c. Adjustments to the Federal Share of Costs. Necessary adjustments to the federal share of the costs of the Award are made after FTA receives and reviews the required closeout information. Adjustments may also be necessary after the "Single Audit" required by 2 CFR part 200 is performed. Federal assistance is not available for audit or activities in support of the Award after the Award has been closed. Additional information pertaining to the required audit is contained in Chapter VI, Financial Management. Any federal assistance for the Award received by the recipient but not expended must be returned to FTA. For more information pertaining to returning federal assistance to FTA, *See* Chapter VI, "Financial Management."

6. SUSPENSION AND TERMINATION.

a. Suspension. The suspension of the Award is an action by FTA that temporarily suspends federal assistance for the Award or a specific Project approved for the Award (or more than one Award) pending corrective action by the recipient or pending FTA's decision to terminate the Award. If FTA determines that the recipient has failed to comply with the terms and conditions of the Grant or Cooperative Agreement, including the civil rights requirements, FTA will notify the recipient in writing of its intent to suspend the Award. FTA may withhold further payments and/or prohibit the recipient from incurring additional obligations pending corrective action by the recipient or a decision to terminate for cause. This includes work being performed by third party contractors or consultants. Unless FTA notifies the recipient otherwise, suspension will not invalidate obligations properly incurred by the recipient before the date of suspension to the extent that those obligations cannot be cancelled.

b. Termination for Cause. FTA may terminate the Award, in whole or in part, at any time before completion, whenever it determines that the recipient failed to comply with its conditions including failure to make reasonable progress. FTA also may terminate the Award when FTA determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing that Award. FTA will promptly notify the recipient in writing of its intent to terminate, the reasons therefor, and the effective date of termination. Payments made to the recipient or recoveries by FTA will be made in accordance with the terms of the Grant or Cooperative Agreement and the legal rights and liabilities of both parties as specified in the Grant or Cooperative Agreement.

c. Termination for Convenience. FTA or the recipient may terminate the Award in whole or in part, when both parties agree that continuation of the Award would not produce results commensurate with the further expenditure of federal assistance. By executing the Award, the recipient agrees at the outset to a termination for convenience in the event FTA makes such a finding. Both parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portions of the Award to be terminated. The recipient may not incur new obligations for the terminated

portion of the Award after the effective date of the termination and must cancel as many outstanding obligations as possible. FTA evaluates each obligation to determine its eligibility for inclusion in the costs of the Award. Settlement is made in accordance with the terms and conditions of the Grant or Cooperative Agreement. FTA allows full credit to the recipient for the federal share of the obligations (that cannot be cancelled) properly incurred by the recipient before termination.

d. Partial Termination. In some cases, FTA may deobligate federal assistance for the Award before closeout because the federal assistance is no longer needed to accomplish the purpose of the Award.

7. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS.

a. Applicability. This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of each recipient. Records retention and access requirements also apply to the recipient's third party contractors, third party subcontractors, and subrecipients. The recipients must include this requirement in third party contracts, direct each subrecipient to include these requirements in their subagreements, and also direct its third party contractors to include these requirements in its third party subcontracts. These records are:

(1) Records required to be maintained as identified in this circular; or as outlined in the terms of the Grant or Cooperative Agreement, or otherwise considered pertinent to FTA program requirements.

(2) Records executed electronically, that may be retained electronically. However, copies made by microfilming, photocopying, or similar methods may be substituted for the original records, and files must be accessible for possible review, audit, or down-loading to paper copy when required.

(3) This section does not apply to records maintained by third-party contractors or subcontractors.

b. Length of Retention Period.

(1) Except as otherwise specified, records must be retained for three years from the specific start dates specified in Chapter III, subsection 7.c, below.

(2) To avoid duplicate record keeping, FTA may make special arrangements with the recipient (including subrecipients, as appropriate) to retain any records that are continually needed for joint use. FTA will request the transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by FTA, the three-year retention requirement is not applicable to the recipient.

c. Starting Date of the Retention Period.

(1) General. In most circumstances, the starting date for retention of records is the date when FTA accepts the close out request, the final FFR, and the final MPR. For a project that is supported with federal assistance across multiple Awards, FTA may request that the starting date for retention of records be the date when the last associated award is closed. For example, for a large capital project where a third party contract is funded across more than one Award, retention of records associated with that third party contract would commence as soon as the last Award financing that third party contract is closed. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records must be retained for three years after completion of the action and resolution of all issues that arise from it.

(2) Equipment Records. The three-year retention period for equipment records starts from the date of the equipment's disposition, replacement, or transfer at FTA's direction.

(3) Records for Income Transactions after Closeout of the Award. In some cases, the recipient must report income after the Award is closed. When there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the recipient's FY in which the income is earned, even if it falls after the date of the closeout of the Award (for example, if closeout occurs on September 5, and the recipient's FY ends on June 30 of the following year, record retention begins the next day, on July 1).

(4) Indirect Cost Rate Proposals, Cost Allocation Plans (CAPs) and Similar Rate, and Rate Allocation Methods. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, CAPs, and any similar accounting computations or the rate at which a particular group of costs is chargeable (such as computer usage charge back rates or composite fringe benefit rates).

(a) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the recipient) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.

(b) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the recipient) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the FY (or other accounting period) covered by the proposal, plan, or other computation.

(5) Third Party Contract Records. The retention period for all third party contract records required to be retained commences after the recipient(s) makes final payment(s), and all other pending contract matters are closed.

(a) Substitution of Photocopies. Copies of documents may be substituted for the originals.

(b) Access to Records.

1 Records of Recipients and Subrecipients. FTA, the DOT Office of Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, have the right of access to any of the recipient's books, documents, papers, or other records that pertain to the award, in order to perform audits, or make examinations, excerpts, or transcripts.

2 Expiration of Right of Access. The right of access in this section is not limited to the required retention period but continues as long as the records are retained.

(c) Restrictions on Public Access. In general, the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552, does not apply to any recipient record owned and possessed by the recipient until the recipient provides that record to the Federal Government. Unless required by state or local law, recipients and subrecipients are not required to provide periodic public access to their records. However, FTA may request a recipient to provide access to those records the recipient maintains on behalf of FTA, (*i.e.*, records required by federal statute or regulation, such as Davis-Bacon wage records), or other records necessary to determine compliance with federal requirements established as conditions of eligibility for recipients of federal assistance.

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CHAPTER IV

MANAGEMENT OF THE AWARD

1. GENERAL. Real property including facilities purchased or constructed under the Award, equipment including rolling stock, and supplies must be managed, used, and disposed of in accordance with applicable laws and regulations. This chapter provides guidance on the management, use, and disposition of Federal Transit Administration (FTA) assisted property including facilities purchased or constructed under the Award, equipment including rolling stock, and supplies in accordance with 2 CFR part 200 and other federal requirements.

2. REAL PROPERTY. Real property must be acquired, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA), 42 U.S.C. § 4601 *et seq.*, and 49 CFR part 24, the implementing regulation. Real property must be used and managed in accordance with the current Master Agreement and subpart D of 2 CFR part 200, specifically §§ 200.311, 200.316, 200.329, 200.436, and 200.439. The following requirements govern the acquisition, use, or disposition of real property purchased with federal assistance. All regulatory references in this Section are to 49 CFR part 24, unless specified otherwise.

   a. General. If a recipient is using federal assistance to acquire real property or provide relocation assistance necessary to secure property for the Award, the recipient must comply with the requirements in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act or URA), as amended. The Uniform Act is implemented by regulation, 49 CFR part 24.

      The objective of the Uniform Act is to ensure equitable treatment of property owners of real property to be acquired under the federal and federally assisted Award; that people displaced by a federally assisted Award be treated fairly, consistently, and equitably; and that acquiring agencies implement the regulations in a manner that is efficient and cost effective. The regulations implementing the Uniform Act are very specific in naming the means to achieve those legislated objectives.

      FTA must review and concur in appraisals and review appraisals for acquisitions and dispositions of more than $500,000 or in-kind contributions and land exchanges of any value before federal assistance is expended, or the value is used as non-federal share. A review appraiser's report is required on all appraisals receiving federal assistance. Federal assistance may be awarded before the appraisal is completed; however, the amount of the in-kind contribution cannot be determined and applied to the Award until the appraisal has been approved by FTA. The requirements and processes for conducting appraisals, review appraisals, providing relocation assistance, and requesting FTA's concurrence are described as follows:

      (1) To ensure eligibility for federal assistance, the recipient should follow the typical process sequence when acquiring real property under an Award:

National Environmental Policy Act (NEPA) Approval → Title Search → Appraisal → Appraisal Review → Just Compensation Determination → FTA Concurrence (if required) → Offer to Owner → Settlement.

However, recipients may engage in preliminary activities to complete the NEPA process provided they do not limit future NEPA considerations or violate the requirements of the Uniform Act. These preliminary activities may include relocation planning and preliminary discussions with property owners that do not result in binding agreements. If a recipient chooses to engage in any preliminary negotiations, its staff should prepare a statement for the owner's signature indicating that the owner understands these discussions to be preliminary and non-binding as to price and other consideration. Failure to comply with this requirement may jeopardize the eligibility of the Award.

(2) If a recipient is considering leasing real property and facilities, discussed in this paragraph, or equipment (except for rolling stock or related equipment), discussed in subsection 4.l of this Chapter, rather than outright purchase of the same, and such lease is a capital not an operating lease, then the recipient must comply with 49 CFR part 639 "Capital Leases" except for provisions pertaining to cost effectiveness.

b. Appraisal of Real Estate.

(1) General. An offer of just compensation must be established on the basis of recent independently prepared appraisal documents that estimate the fair market value.

(2) Appraisers. Appraisers must be certified or licensed with a State Appraisal Board as required by 49 CFR § 24.103(d)(2). However, staff employees may be exempt from this requirement. FTA recommends that appraisals and review appraisals be completed by appraisers experienced with state and federal laws for valuing properties for public acquisitions under the threat of eminent domain. Appraisers and recipients making appraisal assignments should be familiar with the implementing regulations of the Uniform Act, 49 CFR part 24, especially subpart B—Real Property Acquisition. State subrecipients may use the state's staff appraisers to prepare required independent appraisals and appraisal reviews.

(3) Requirements. Appraisals must be fully compliant with all of the appraisal requirements as cited in 49 CFR § 24.103(a). This includes compliance with the Scope of Work (SOW) (reference Appendix D to this Circular), *i.e.*, defining the appraisal requirements and, as appropriate, a realty/personalty report. The appraisal SOW sets out the specifications for the appraisal of a specific parcel or grouping thereof. It can be included in or appended to the contract with a fee appraiser or the assignment to an agency staff appraiser. The appraiser will also appropriately address the requirements of 49 CFR § 24.103(b) and (c) in the report concerning the effects of influence of the Award and owner retention of improvements.

Depending on the individual State Appraisal Board, certified/licensed appraisers may need to utilize the jurisdictional exception provisions of Uniform Standards of Professional Appraisal Practice (USPAP) in order to complete the assignment for a public agency in full compliance with the requirements of 49 CFR § 24.103.

If the acquisition leaves the owner with an uneconomic remnant, the appraiser or review appraiser may be assigned the responsibility to make this determination and appraise the fair market value of the remnant. *See* 49 CFR § 24.102(k).

The owner also has a right to accompany the appraiser during the inspection of the property pursuant to 49 CFR § 24.102(c)(1).

When valuing properties that contain contamination or hazardous material, the appraiser must consider the effect, if any, the contamination's or material's presence has on the market value. Recipients shall ensure that all Environmental Site Assessment (ESA) research results undertaken during the NEPA process are provided to the appraiser at the start of the valuation process.

The appraisal of property with contamination is a complex subject and is more fully covered in the discussion of the appraisal Scope of Work found in Appendix D. Recipients should update appraisals over six months old in an active real estate market before fair market value is determined and submit to the FTA Regional Office for review and concurrence, when required. If the documents are not updated, the letter of transmittal to FTA shall provide adequate justification explaining why the appraisal was not updated.

(4) Exceptions. Full appraisal and/or negotiation procedures are not necessary in certain instances. While an appraisal of the property may not be required in some of the following instances, the recipient must have some reasonable basis for its determination of fair market value in accordance with 49 § CFR 24.101(b) and the related requirements to this section in 49 CFR part 24, appendix A. In the case of a donation, an appraisal may not be required; however, an appraisal is required if the recipient proposes to use the property as an in-kind contribution as part of the non-federal share. State subrecipients may use the state's staff appraisers to prepare required independent appraisals. FTA should be contacted for further guidance when any one of the following situations occurs:

(a) The owner is donating the property, reference 49 CFR §§ 24.108 and 24.102(c)(2),

(b) The recipient does not have authority to acquire property by eminent domain as set out in 49 CFR § 24.101(b),

(c) The property qualifies as a voluntary acquisition as described in 49 CFR § 24.101(b), or

(d) The valuation is uncomplicated, and the fair market value is estimated at$10,000 or less, based on a review of available data, using the waiver valuation provision found at 49 CFR §§ 24.102(c) and 24.2(a)(33).

(5) Exceptional Circumstances. Recipients may request FTA review and approval to use other reasonable valuation methods for determining the remaining property valuation

and federal interest at the time of the disposition request. Other valuation methods could include accelerated depreciation, comparable sales, or established market values. In its review of such a request, FTA may consider any action taken, omission made, or unfortunate occurrence the recipient suffered.

c. Appraisal Review of Real Estate.

(1) General. All appraisals for acquisition of real property are to be reviewed in accordance with the Uniform Act and 49 CFR § 24.104. The review appraisal should determine the soundness of the report's value estimate. A qualified review appraiser (*See* 49 CFR § 24.103(d)(1), 49 CFR part 24, appendix A, and 49 CFR § 24.104) shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of an appraisal found in 49 CFR § 24.2(a)(3), as well as other appraisal requirements found in 49 CFR § 24.103 and other applicable state and local requirements. FTA requires that the review appraiser's comments be in a narrative format. The review appraiser may use an appraisal checklist provided that it is supported by a narrative explanation of the key points of the appraisal.

The review appraiser is often expected to determine whether the value conclusion is consistent with state laws pertaining to what is compensable in eminent domain for public acquisitions and with the Uniform Act. The review appraiser is also responsible for assuring that value estimates are consistent when multiple parcels of property are needed for the Award. The review appraiser cannot determine the soundness of a report's value estimate without possessing familiarity with the subject property, the comparable sales used, and other market factors; thus rarely will only a desk review be sufficient. The appraisal review report is expected to be a technical analysis of the appraisal, not merely an administrative review.

(2) Requirements. In accordance with 41 CFR § 24.104(a), the review appraiser shall prepare a written report identifying each appraisal report as:

(a) Recommended (as the basis for the establishment of the amount believed to be just compensation),

(b) Accepted (meets all requirements, but not selected as recommended or approved), or

(c) Not accepted.

(3) Establishment of Just Compensation. If authorized by the recipient, a staff review appraiser may also establish the approved appraisal amount as the offer of just compensation. Under no circumstances can the establishment of the just compensation amount be delegated to a contractor (*i.e.*, a fee review appraiser) who is not a governmental official of the agency.

If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring agency that it is not practical to obtain an additional

appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with 41 CFR § 24.103 to support a recommended (or approved) value (*See* 41 CFR part 24, appendix A, related to 41 CFR § 24.104(b)).

Review appraisers who are not staff employees must be state certified appraisers.

d. Appraisal Concurrence Requirement.

FTA concurrence is required for both appraisals and the appraisal reviews when:

(1) For intended parcel acquisition and disposition, the valuation is greater than $500,000,

(2) For non-federal contribution, whether in cash or in-kind contributions, and land exchange of any value, or

(3) For property condemnations exceeding $500,000.

Note: All appraisals regardless of value must be compliant with 49 CFR § 24.103. FTA may choose to review any appraisal or review appraisal used in an FTA assisted Award when circumstances warrant or as part of a periodic review. The recipient must maintain documentation that supports valuation decisions in the parcel files.

e. Acquisition of Real Estate and Concurrence Requirements. In accordance with URA requirements every effort should be made to acquire real property by negotiation based on the approved just compensation amount that has been determined by the acquiring agency and considering the requirements described below:

(1) Market Value. Before making an offer to the property owner, the recipient must first establish market value of the parcel to be purchased. Property acquisition activities will be conducted in compliance with the requirements of 49 CFR §§ 24.101 and 24.102. Market value is to be established through a current appraisal and appraisal review accomplished in accordance with the requirements of 49 CFR §§ 24.103 and 24.104, respectively. Once the appraisal and the appraisal review are complete, a determination of just compensation must be made by the recipient in accordance with 49 CFR § 24.102(d).

(2) Making an Offer. After the just compensation determination has been made by the agency, with FTA concurrence, if required, an offer can be made to the owner.

No owner shall be required to surrender possession of real property without either payment of the agreed purchase price to the owner or deposit of the established just compensation amount in a condemnation court as set out in 49 CFR § 24.102(j). The full amount of the deposit must be made available to the owner without prejudice pending the ultimate determination of just compensation by the judicial process. The recipient must expeditiously reimburse property owners for actual, reasonable, and necessary expenses incidental to transfer of title pursuant to 49 CFR § 24.106.

(3) Uneconomic remnant. If the acquisition leaves the owner with an uneconomic remnant, the recipient must offer to acquire that remnant, and its value will be presented as an element of the written offer that is made (*See* 49 CFR § 24.102(k)).

(4) Filing Condemnation. Additionally, FTA concurrence is required before filing for condemnation if the appraised amount exceeds $500,000.

(5) Administrative Settlements. Any settlement in excess of the recipient's approved just compensation must be addressed as an administrative settlement (*See* definition, Chapter I, Subsection 5.c. of this Circular) and 49 CFR § 24.102(i). The term "administrative settlements" encompasses both negotiated settlements and legal settlements. Legal settlements are those arrived at prior to a trial on the merits.

(a) Requirements. Administrative settlements in excess of $50,000 of the current fair market value require prior FTA concurrence. Note that relocation payments are not considered part of an administrative settlement. Instead of using its power of eminent domain when a property cannot be purchased at appraised value, a recipient may propose acquisition through negotiated settlement, as explained previously in Chapter IV, paragraph 2.e.(6) of this Circular. The recipient must document that reasonable efforts to purchase the property at the appraised amount have failed and prepare a written justification supporting why the settlement is reasonable, prudent, and in the public interest. Such a settlement will be handled in accordance with administrative settlement requirements at 49 CFR § 24.102(i). If the settlement request represents a significant increase in excess of $50,000 of the just compensation and if trial risks are a key factor in the settlement justification, a litigation attorney for the recipient must be consulted and provide a signed letter of concurrence in the settlement. The decision to recommend a settlement should evaluate among other relevant matters, the risks of settling for the proposed amount versus the risks of conducting a condemnation trial in court.

(b) Settlement Concurrence Requirement. All settlements must be justified in writing and be available in the files pertaining to the Award. The justification shall be thorough, document the entire settlement process, demonstrate the logic and reason supporting the settlement, and be able to withstand the scrutiny of an independent review. If either type of settlement exceeds FTA's threshold for approval, it must be submitted to FTA for advance concurrence before the settlement is consummated.

f. Relocation Assistance. The relocation assistance program provides a variety of advisory services and benefits to displaced people, businesses, and non-profit organizations. The highlights of this program element and FTA policies related to it are summarized in the following:

(1) Early provision of written notices and explanations of federal acquisition and relocation programs must be provided to displacees as required by 49 CFR part 24.

(2) No individual, family, business, farm, partnership, corporation, or association will be required to move without at least 90 days advance notice per 49 CFR § 24.203(c).

(3) In the case of residential displacees, the 90-day notice must also include the availability of at least one comparable replacement dwelling. Rental assistance and replacement housing payments are provided to make the dwellings affordable and available at the time the notice is given. *See* 49 CFR § 24.203(c)(3).

(4) All displacees, both business and residential, are reimbursed for certain moving expenses per 49 CFR §§ 24.301 through 24.306.

(5) There must be as many residential dwellings available as there are families who will be displaced. The dwellings must be comparable to the ones from which the people are displaced. In addition, the comparable replacement dwellings must be decent, safe, and sanitary (DSS); located in the same area or in areas generally not less desirable in regard to public utilities and public and commercial facilities; reasonably accessible to the displacees' places of employment and within the financial means of the displaced families; and adequate in size to accommodate the occupants in accordance with 49 CFR § 24.204.

(a) The definition of DSS at 49 CFR § 24.2(a)(8) contains the following requirements regarding the number of rooms and area of living space for the displacee. "The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the policies of the displacing Agency. In addition, the displacing Agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of such agencies."

(b) In the absence of applicable housing codes, FTA's policy requires separate bedrooms and gender separation for children over 12 years of age.

(6) Replacement housing must be open to all people regardless of race, color, religion, sex, or national origin as required by 49 CFR § 24.8 of the URA regulations.

(7) Any relocation benefits required by state or local law exceeding the specified limits in the Uniform Act will not be reimbursed by FTA.

(8) Any global type settlements of a property acquisition that involve the inclusion of relocation payments based on other than relocation costs that are actual, reasonable, and necessary are not eligible for FTA reimbursement in accordance with 49 CFR § 24.207(f) of the URA regulations.

(9) Rental and for-sale dwellings used in the determination of replacement housing benefits must be actually and currently available for sale or rent. FTA does not allow the use of rent schedules for the calculation of rental housing cost differentials as it is not compliant with the URA regulations that require that comparable and currently available rental properties be identified and provided to the displacee.

g. Special Real Estate Acquisition Program Strategies/Issues. Several real estate program strategies or issues are worthy of discussion in some detail as follows:

(1) Alternative Procedure. A recipient with a qualified and fully staffed real estate department conducting a major capital project within an FTA assisted Award may request an alternative process, which permits higher dollar thresholds before FTA prior concurrence is needed.

Recipients may request a review through the FTA Regional Office. An FTA real estate specialist will review the acquisition process and the recipient's capabilities.

The request for the approval for alternative real property procedures at a minimum should include the following:

(a) A statement providing an overall justification and reasoning for why the alternative procedure is requested,

(b) A copy of real estate department operating procedures,

(c) A real estate department organization staffing chart,

(d) A strategy for using and qualifying real estate services contractors, if used,

(e) An estimate of the number of transactions that may exceed requested threshold(s),

(f) A discussion of real estate acquisition schedule/status relative to the overall schedule for the Award, and

(g) A discussion of real estate department program quality assurance/quality control procedures that are in place to assure program delivery is in compliance with Uniform Act requirements and effective/efficient operational standards given the higher thresholds requested.

(2) In-Kind Contributions. Recipients may use in-kind contributions of real property as part of the non-federal share so long as the property to be donated is needed to carry out the scope of the Award. Contributions of real property as non-federal share, either owned and contributed by the recipient or by a third-party to the recipient, must meet the following criteria:

(a) Are verifiable from the recipient's records,

(b) Are not included as contributions for any other Award,

(c) Are necessary and reasonable for accomplishment of the objectives of the Award.

(d) Are allowable under the Federal Cost Principles,

(e) Are not paid for by the Federal Government under another federal Award; except where an applicable federal statute specifically allows such payment, and

(f) Are provided for in the Award Budget.

The property can be owned and donated by the recipient or by a third party. The in-kind contribution allowance will be based on the current market value as independently appraised. Appraisals and review appraisals for property being donated, regardless of appraised value, must be submitted to the FTA regional or metropolitan office for concurrence. The value of the donated property may not exceed the fair market value of the property at the time of the donation.

Credit can only be allowed for the value of the portion of real property used or consumed by the project. If part of a larger parcel is to be used as non-federal share and the remaining sub-parcel is intended to be used at a future date for future share, the recipient is cautioned to clearly indicate the limits of the sub-parcel to be used as non-federal share and the appraised amount associated with the sub-parcel. The remnant sub-parcel can then follow the same procedure for future non-federal share. If the entire parcel is provided as non-federal share and no delineation is made related to possible use of the excess sub-parcel as over-match, eligibility of the over-match sub-parcel may be lost. If federal assistance were used to purchase the property, only the non-federal share of such property may be counted as the value of the in-kind contribution.

(3) Land Exchanges. Some recipients find that during the development of the Award, better uses of federally assisted property can be achieved by exchanging parts or parcels with neighboring property owners, sometimes called a land swap or land exchange. FTA does not have a separate process for these transactions; instead, this action is accomplished through determining the current fair market value, by appraisal, of the property to be acquired and the property to be disposed by the recipient. Since the land exchange process is in lieu of a typical acquisition, all of the Uniform Act requirements are applicable. If the Award is still open, and the part to be disposed is more valuable than the part acquired, the net proceeds must be credited to the open Award. If the Award is closed, or not yet developed, the recipient should follow other disposition methods defined in this chapter.

(4) Joint Development. Please refer FTA Circular 7050.1, "Federal Transit Administration Guidance on Joint Development," for further information if seeking to pursue a joint development with federally assisted property.

(5) Functional Replacement. Functional replacement provides a method of paying the cost necessary to replace a publicly owned facility (*i.e.*, a fire station or public school) being acquired with a similar needed facility. The FTA regional or metropolitan office should be contacted for further information.

A determination to use functional replacement should be made early in the development process for the project or projects under the Award. The use of this approach would usually be addressed during the environmental review phase

preceding the Award and be presented as a mitigation measure to be undertaken under the Award.

(6) Contaminated Property (including Brownfields as defined in Chapter 1 of this Circular).

As part of the NEPA process, the recipient must undertake appropriate due diligence to identify the risks associated with acquiring property that may be contaminated. For all real estate acquisitions, the recipient must undertake a Phase I Environmental Site Assessment (ESA) to assess the environmental condition of the property and identify actual or potential areas where contaminants may have been released to the environment. If the results of the Phase I ESA indicate that the property is likely contaminated, the recipient shall undertake, as appropriate, additional Phase II and III ESAs to confirm the presence of contaminations and quantify the cost to remediate based on the intended use of the property for the federally assisted capital Award. For those projects in which FTA issues a NEPA determination with detailed documentation, all necessary remediation commitments based on the results and recommendations of the ESA(s), including commitments to engage in further evaluations if the site access was restricted, will be included in FTA's NEPA determination. For NEPA determinations without detailed documentation, any such remediation commitments must be included in the file for the Award and in the Grant or Cooperative Agreement. When acquiring contaminated properties, the recipient, as project sponsor, should collect as much information as possible regarding the levels of contamination on the desired site and determine an appropriate approach for remediation prior to the completion of NEPA.

The results of the Phase I, II, and III ESAs, where available, and other site-specific documentation prepared by the recipient must be provided to the real estate appraiser for consideration of the effect, if any, contamination has on the highest and best use (HBU) and the market value of the property, including what is commonly referred to in many states as a market condition known as "stigma," in accordance with state law.

The valuation analysis of a contaminated property involves a complex economic and environmental analysis from the standpoint of HBU that requires the careful preparation of an appraisal Scope of Work that appropriately addresses the appraisal problem as provided in Appendix D. Due to the complexity of appraisals involving contaminated property, it is suggested to contact your FTA Region for legal and technical assistance as early as possible.

An FTA environmental determination (FEIS/ROD, ROD, FONSI, or CE) should be obtained before any offer to purchase or other commitment is made to purchase the property or to proceed to a settlement. Further, ESA Phases I, II, and III may be required including estimated remediation costs before a reliable real estate appraisal of the value of the property can be completed. Such information may be required by the appraiser to determine the cost of any remediation required for the HBU or other uses, including the use anticipated for the transit Award. It may be necessary to

obtain a right of entry (ROE) or other preliminary property interest to do appropriate site assessments, if available.

Since it may be difficult for a recipient to undertake a Phase II ESA prior to land acquisition since such a study is intrusive and requires access to the site and actual physical samples to be collected, the recipient shall consider the following limitations prior to acquiring contaminated properties:

(a) The legal responsibility for hazardous material clean up and disposal rests with parties within the property title chain and with parties responsible for the placement of the material on the property. Recipients must attempt to identify and seek legal recourse from those potentially responsible parties or substantiate the basis for not seeking reimbursement for FTA review and consideration.

(b) The estimated cost to remediate the contamination may result in a total cost of the Award that exceeds the recipient's ability to fully finance it without significant risk to the project. If the recipient and FTA determine that the recipient does not have sufficient funds to proceed with the Award, the recipient shall seek an alternate site for the Award. Any FTA assistance provided to the recipient to purchase property that is subsequently abandoned shall be either returned to FTA or credited against a future property acquisition.

(c) FTA generally will not participate in the remediation of contamination discovered during construction, except where it has been demonstrated that appropriate environmental studies were performed, the results communicated to the appraiser prior to the appraisal, and the recommendations followed.

There are two exceptions to this policy as follows:

1 The brownfield site was previously utilized for transportation use and the recipient or transit agency is legally responsible for all cleanup activity, or

2 Seeking and obtaining compensation from potentially responsible parties would involve excessive litigation and delay in completing the Award, the cost of which would likely exceed the remediation cost, and which would be contrary to the public interest.

FTA also recognizes that the recipient may not be able to quantify the extent of contamination or cost to remediate the property until the recipient obtains access to the site to conduct a Phase II or possibly Phase III ESA. In these instances, FTA will work with the recipient to develop a process for estimating the total cost of the Award, including cleanup, to ascertain whether or not the Award should continue as planned given the site conditions. FTA will consider what assurances the recipient can provide to minimize the risks associated with developing a contaminated site prior to approving an Award for construction activities. Where the risks are deemed too great for the Award to bear, FTA will instruct the recipient to locate an alternate site to support the Award.

(d) Refer to Appendix D, "Guide for Preparing an Appraisal Scope of Work" for a discussion of the valuation of contaminated property.

(e) The recipient should contact FTA for technical assistance regarding contaminated property.

h. Real Estate Acquisition Management Plan (RAMP). FTA requires a RAMP for each major capital project within an Award as a part of the Project Management Plan (PMP) under 49 CFR § 633.25 and the Relocation Plan in accordance with 49 CFR § 24.205. A RAMP is not required for other capital projects within an Award with real estate acquisition; however, all capital projects must be in compliance with 49 CFR § 24.205, if real estate acquisition or relocation assistance is involved. The RAMP is a planning document for the acquiring agency and is a control document for FTA that includes real estate goals and methodology from the perspective of timing, staffing, statutory, and policy issues.

The RAMP should be periodically reviewed by the recipient for needed changes. A written relocation plan should be a part of the RAMP if there are anticipated displacements of residential occupants or businesses. The extent of the relocation plan should be commensurate with the complexity and volume of displacements.

The RAMP must clearly detail how the needed real estate for the Award will be acquired. *See* Appendix C of this circular for a model in the development of a RAMP.

i. Property Management. This area concerns the post construction management of property acquired for the facility during development to ensure that it is properly maintained and operated efficiently for the benefit of the transit system.

(1) Title to Real Property is vested in the recipient or other public bodies. The recipient agrees to include a covenant in the title of the real property acquired for use under the Award that assures nondiscrimination during the useful life of the property.

(2) Use. Real property must be used for the originally authorized purpose as long as needed for that purpose. Recipients must not dispose of, modify the use of, or encumber its title or other interests in the federally assisted site and facilities without prior FTA written approval. Recipients are required to use federal assisted property continuously and appropriately throughout the useful life of the property. Recipients may be required to return the entire amount of federal assistance spent on the Award or federally assisted property thereunder if, during the useful life, the recipient has unreasonably delayed or failed to use the federally assisted property for its originally intended purpose. Recipients are also required to notify FTA before property is removed from the service originally intended at the time of approval of the Award and if property is put to additional or substitute uses.

(3) Maintenance. Real property must be appropriately maintained. A description of the improvements, expansions, retrofits, and maintenance of real property must be properly documented in the facility inventory along with parcel address or location, useful life, date placed in service, original acquisition cost and federal percentage of cost in order to accurately determine an equitable valuation of federal interest at the time of early disposition of the asset.

(4) Idle Facilities and Idle Capacity.

(a) Idle facility means completely unused facilities that are excess to the recipient's current needs. Idle capacity means the unused capacity of partially used facilities. Idle capacity is the difference between that which a facility could achieve under 100 percent operating time, on a one-shift basis, less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and the extent to which the facility was actually used to meet demands during the accounting period.

(b) Costs of Idle Facilities or Idle Capacity. Cost of Idle Facilities or Idle Capacity means costs such as maintenance, repair, housing, rent, and other related costs including insurance and depreciation. The costs of idle facilities are unallowable except to the extent that they are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all programs or it can be shown that the costs were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination or other causes which could not have been reasonably foreseen. Under the exception previously stated, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of the facilities and the justification provided by the recipient for FTA review and approval.

(5) Reporting on Real Property. Reporting on Real Property. Recipients must maintain adequate records on the status of real property in which the Federal Government retains an interest. FTA requires that recipients maintain a real property inventory on file for review upon request by FTA to satisfy the requirements of 2 CFR § 200.329, which requires recipients to submit reports on an annual basis for real property in which the Federal government retains an interest. In those instances where the Federal interest in the real property will extend for a period of 15 years or more, a recipient may request FTA's permission to report at multi-year frequencies, not to exceed a five-year reporting period.

A Real Property Inventory must include: property location/physical address; use and condition of the property; summary of conditions on the title; brief description of improvements, expansions, and retrofits; corresponding useful life for the assets; date placed in service; original acquisition cost; sources of funding; federal and non-federal participation ratios; federal award identification number; appraised value and date; anticipated disposition or action proposed; date of disposal; and sale price of the property. If the property is excess, identify the reasons for having excess property, such as purchase to a logical boundary. This inventory is necessary in order to accurately account for assets, and determine an equitable valuation of federal interest retained in the property.

The Excess Real Property Inventory and Utilization Plan requirement has been removed from 5010, and replaced with the new Real Property Reporting requirements. The administrative requirements and cost principles found in the Common Rule became effective for new awards and to additional federal assistance (funding increments) to existing Awards on or after December 26, 2014.

(6) Non-Transit Uses of FTA Assisted Real Property. FTA's policy is to permit recipients maximum flexibility in determining the best and most cost-effective use of

federally assisted property. To this end, FTA encourages non-transit uses of real property that can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. These non-transit uses are by one of three means: incidental use, joint development, or shared use. FTA approval is required for any non-transit uses of real property and the use must be compatible with the original purposes of the Award. Further, the recipient is required to maintain satisfactory continuing control over the property.

(a) Incidental Use. Incidental uses must be compatible with the approved purposes of the Award and may not interfere with either the intended uses of the property or the recipient's ability to maintain satisfactory continuing control. Incidental use must be reported in the FFR of the award. An incidental use may not affect a property's transit capacity or use. Alterations to accommodate an incidental use should have no negative impact on the transit service or activity. FTA continues to monitor the incidental use after the award is closed and the recipient is required to keep an inventory of the use. FTA reviews the inventory during the triennial review process.

1 Examples of incidental use include:

a Temporary use of transit property as a staging area for nearby construction,

b Allowing nearby theaters and restaurants to use transit parking spaces during the transit system's off-hours,

c Leasing of space in a station for a newspaper stand or coffee shop when the additional use does not interfere with the original purpose authorized in the award, and

d The lease of air rights over transit facilities or utilities associated with transit facilities (such as spare capacity in general utilities and fiber optics communications utilities) that do not impact the structural configuration of the transit facility.

2 Revocation. An incidental use agreement should permit revocation by the recipient.

3 Limits. The Recipient agrees that any incidental use of federally assisted property will not exceed that permitted under applicable federal requirements and federal guidance. The recipient may permit non-transit public entities and private entities to have incidental use of its federally assisted facilities and equipment, including alternative fueling facilities and associated equipment, subject to the following considerations:

Incidental uses of real property are subject to the following considerations:

a Needed Property. This policy applies only to property that continues to be needed and used for an FTA Award. It is FTA's intention to assist only in the purchase of property that is needed for an FTA Award.

b Purpose & Activity. The use must not compromise the safe conduct of the intended purpose and activity of the initial public transit activity under the Award.

c Continuing Control. The use must not in any way interfere with the recipient's continuing control over the use of the property or the recipient's continued ability to carry out the Award.

d No-Income Use. While FTA is particularly interested in encouraging incidental use as a means of supplementing transit revenues, no-income uses are also permitted under certain circumstances.

e Income. Proceeds from incidental use including licensing and leasing of air rights or leasing of other real property interest should be based on competitive market rents and rates of return based on the appraised fair market value. Income received from the authorized incidental uses including the use of air rights may be retained by the recipients (without returning the federal share) if the income is used for eligible transit capital, or operating expenses. This income cannot be used as part of the non-federal share of the Award from which it was derived. However, it may be used as part of the non-federal share of another FTA Award.

f Recapture. The recipient should recapture all the costs related to the incidental use from the non-transit public entity or private entity, including all applicable excise taxes on fuel for fueling facilities and wear and tear to capital improvements, unless FTA approves otherwise.

(b) Joint Development. A joint development project is a transit capital project that integrally relates to, and often co-locates with commercial, residential, mixed-use or other non-transit development within an Award. Joint development may include partnerships for public or private development associated with any mode of the transit system that is being improved through new construction, renovation, or extension. Joint development may also include intermodal facilities, intercity bus and rail facilities, transit malls, or historic transportation facilities. A joint development project, awarded with FTA federal assistance, must satisfy the four eligibility criteria of 49 U.S.C. § 5302(3)(G) as described in FTA Circular 7050.1 Guidance on Joint Development. Please refer to that FTA Circular for further information if seeking to pursue a joint development with federally assisted property.

(c) Shared Use. Shared use takes place when a non-transit partner participating in the Award, separate from the recipient, occupies a part of a facility and pays its pro rata share of the construction, maintenance, and operation costs. Shared uses

must be declared at the time of Award. Shared use of property requires prior written FTA approval except when it involves coordinated public transit human services transportation. Shared use Awards should be clearly identified and sufficient detail provided to FTA at the time of review to determine allocable costs related to non-transit use for construction, as well as on-going maintenance, and operation costs. The shared use description of the Award and the definition of the partner participating in the Award must be clearly identified before approval of the Award.

Examples of shared use projects under an Award include:

1 A vehicle maintenance facility that services both transit rolling stock and non-transit vehicles,

2 A parking garage that provides parking for transit rolling stock as well as parking for non-transit uses, and

3 A parking garage that is constructed to provide parking for both transit patrons and the general public or for a specific business purpose.

j. Real Estate Disposition.

(1) Excess Real Property Inventory and Utilization Plan. The recipient shall prepare and keep up to date an excess property inventory and utilization plan for all property that is no longer needed to carry out any transit purpose. The inventory list should include such things as the property location, a summary of any conditions on the title, the original acquisition cost, the federal participation ratio, the federal award identification number, the appraised value and date, a brief description of improvements, the current use of the property, and the anticipated disposition or action proposed.

Recipients are also required to notify FTA when property is removed from the service originally intended when an Award is made and if property is put to additional or substitute uses. The recipient's plan should identify and explain the reason for the excess property. Such reasons may include one or more of the following:

(a) The parcel, when purchased, exceeded the recipient's need (uneconomic remnant, purchased to logical boundary, part of administrative settlement, *etc.*),

(b) The property was purchased for construction staging purposes such as access, storage or underpinning, and construction is completed,

(c) The intended use of the parcel is no longer possible because of system changes, such as alignment, or amendments to the Grant or Cooperative Agreement for the Award,

(d) Improvements to real property were damaged or destroyed, and therefore the property is not being used for purposes of the Award, but it is still needed for the

Award. If so, the improvements may be renovated or replaced. In this case, applicable cost principles must be observed, and/or

(e) A portion of the parcel remains unused, will not be used for purposes of the Award in the foreseeable future, and can be sold or otherwise disposed.

Unless FTA and the recipient agree otherwise, the excess real property inventory and updated excess property utilization plan is to be retained by the recipient, available upon FTA request and during the triennial review process.

(2) Disposition. If the recipient determines that real property is no longer needed for the purpose for which it was acquired, FTA may approve the use of the property for other purposes.

(a) Valuation of Property Pending Disposal. For properties no longer needed for transit purposes, the recipient is expected to follow the valuation requirements of 49 CFR part 24 and obtain an appraisal and appraisal review to ascertain the value of the property considered for disposal. Appraisals developed for disposition purposes are required to appraise the value of the land separate from the value of the improvements and these two values must be submitted in the report. FTA's determination of the remaining federal interest in the federally assisted property, that have been removed from service before the end of the useful life of the improvements is determined by comparing the fair market value of the entire property with the value of the land plus the depreciated value of the improvements on the land and taking the greater of these two values as the remaining federal interest in the property.

FTA recognizes that exceptional circumstances may require the recipient to utilize another method of valuation to determine the fair market value of real property that is withdrawn from service. Under unusual circumstances, the recipient may request permission to use another reasonable valuation method including, but not limited to accelerated depreciation, comparable sales, or established market values.

Approval of an exceptional circumstance will necessitate FTA consideration of the action the recipient took, any omission the recipient made, or any unfortunate occurrence the recipient suffered.

For those situations where the existing improvements do not contribute to the highest and best use of the site valuation, recipients should use an accounting approach to ascertain the remaining economic life and value of the improvements rather than an appraisal valuation approach. Contact the FTA Regional Office for further information.

(b) Disposition Methods. When real property is no longer needed for any transit purpose, the recipient will request disposition instructions from FTA. The allowable disposition methods are as follows:

1 Sell and Reimburse FTA. Competitively market and sell the property and pay FTA the greater of its share of the fair market value of the property or the straight line depreciated value of the improvements plus land value. FTA's share of the fair market value is the percentage of FTA participation in the original Award multiplied by the best obtainable price, minus reasonable sales costs. If the property has never been used for the appropriate purposes of the Award, the recipient shall sell the property and pay FTA the greater of FTA's share of the fair market value or the entire amount of federal assistance spent on that property.

2 Offset. Sell the property and apply the net proceeds from the sale to the cost of replacement property under the same program. Return any excess proceeds to FTA in accordance with 2 CFR § 200.311.

3 Sell and Use Proceeds for Other Capital Projects Under an Award. Sell the property and use the proceeds to reduce the gross cost of another FTA eligible capital transit project under an Award. *See* 49 U.S.C. § 5334(h)(4). The recipient is expected to record the receipt of the proceeds in the recipient's accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the amount of those restricted funds as the those proceeds are applied to one or more FTA approved capital projects under Awards. FTA must approve the application of the proceeds to a subsequent capital Award, which should clearly show that the gross cost of the Award has been reduced with proceeds from the earlier transaction. Examples of future FTA eligible capital transit projects include: the acquisition of buses, facilities and equipment.

4 Sell and Keep Proceeds in an Open Award. If the Award is still open, the recipient may sell the excess property and apply the proceeds to the original cost of the total real property purchased for that Award. This may reduce the federal share of the Award.

5 Transfer to Public Agency for Non-Transit Use. Follow procedures for publication in the *Federal Register* to transfer property (land or equipment) to a public agency with no repayment to FTA. This is a competitive process, and there is no guarantee that a particular public agency will be awarded the excess property. *See* 49 U.S.C. § 5334(h)(1)–(h)(3).

6 Transfer to Another Award. Transfer the property to another FTA eligible Award. The federal interest continues.

7 Retain Title With Buyout. Compensate FTA by computing the percentage of FTA participation in the original cost. Multiply the current fair market value of the property by this percentage. The recipient must document the basis for value determination; typically, this documentation is an appraisal or market survey. Alternatively, the recipient may pay FTA the straight line depreciated value of improvements plus land value, if this is greater than FTA's share of the fair market value.

8 Sales Procedure. Sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return or at least payment of appraised fair market value.

3. FTA MANAGEMENT AND PROJECT OVERSIGHT OF PROPERTY ACQUISITION. FTA stewardship of an Award includes various strategies, and in some cases involves the application of risk management techniques. Based on various conditions including dollar thresholds and the complexity of the property acquisitions involved, FTA may require the submission of all transactions meeting certain criteria for prior approval. Refer to the discussion of prior concurrence for certain appraisal, condemnation, and settlement issues discussed in Chapter IV of this circular.

   FTA may also conduct a process or transactional review at any time during or after implementation of the real estate acquisition program to ensure compliance with the governing laws and regulations.

4. EQUIPMENTAND SUPPLIES (INCLUDING ROLLING STOCK). Management standards apply to equipment and supplies purchased with federal assistance. The term, federally assisted property, as used in this section, includes equipment, including rolling stock, and, supplies. Rolling stock describes equipment that is used to transport passengers and includes buses, vans, cars, railcars, locomotives, trolley cars and buses, ferryboats, and vehicles used for guideways and incline planes. Light duty vehicles such as vans, sedans, and pick-up trucks employed in administrative and maintenance purposes are considered equipment. Light duty vehicles employed to transport passengers are considered rolling stock. The following requirements are for the acquisition, use, management, and disposition of federally assisted property:

   a. State Recipients and Other Than State Recipients.

      (1) The Super Circular provides that a state will use, manage, and dispose of federally assisted property acquired under an Award by the state in accordance with state laws and procedures, 2 CFR § 200.313(b). Subrecipients of states shall follow policies and procedures allowed by the state with respect to the use, management and disposal of federally assisted property, 2 CFR § 1201.313.

      (2) The Super Circular also provides that recipients, other than states must follow FTA requirements and procedures outlined below.

   b. Property Title. Title to federally assisted property acquired under an Award is vested in the recipient. The title must be a conditional title, subject to the following conditions:

      (1) Federally assisted property must be used for authorized purposes of the project during the period of performance (usually identified as the useful life of the asset) or until no longer needed for the purposes of the project,

      (2) The recipient must not encumber the property without prior approval from FTA or the pass-through entity, and

(3) The property must be used and disposed of in accordance with the requirements located in this chapter, as well as 2 CFR § 200.313 for equipment (including rolling stock), and 2 CFR § 200.314 for supplies.

c. Federal Interest. FTA retains a federal interest in any federally assisted property financed with FTA assistance until, and to the extent that, FTA relinquishes its federal interest in that federally assisted property. This applies to real property, equipment and supplies.

d. Acquisition. The acquisition cost of federally assisted property means the purchase price of the property acquired for this Award. This is the net invoice unit price, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the federally assisted property usable for the intended purpose. Other charges such as the cost of inspection, installation, transportation, taxes, duty, or protective in-transit insurance should be treated in accordance with the recipient's regular accounting practices as separate line items. Recipients must follow the procurement procedures set forth in the current version of FTA Circular 4220.1 to the extent it complies with federal laws and regulations. Two areas of particular importance for rolling stock procurements are:

(1) Buy America. FTA may not obligate federal assistance for an Award unless the steel, iron, and manufactured goods used in the Award are produced in the Unites States, 49 U.S.C. § 5323(j). When procuring rolling stock, the cost of components and subcomponents produced in the United States (i) for fiscal years 2016 and 2017, is more than 60 percent of the cost of all components of the rolling stock; (ii) for fiscal years 2018 and 2019, is more than 65 percent of the cost of all components of the rolling stock; and (iii) for fiscal year 2020 and each fiscal year thereafter, is more than 70 percent of the cost of all components of the rolling stock. Additionally, final assembly of the rolling stock must occur in the United States. FTA strongly advises recipients to review the FTA Buy America regulations, before undertaking any procurement. *See* also FTA's Buy America webpage for further policy and decision documents.

(2) Pre-Award and Post Delivery Reviews for Rolling Stock. FTA requires that recipients purchasing revenue passenger rolling stock undertake reviews of the rolling stock before award of the bid, during manufacture, and following delivery of the rolling stock. Applicants seeking to acquire rolling stock must certify that they will comply with FTA's pre-award and post-delivery review requirements.

The requirement to undertake the pre-award and post-delivery reviews arises from 49 U.S.C. § 5323(m) and is implemented by FTA regulations at 49 CFR part 663. The reviews are intended to improve compliance with Buy America requirements, the recipient's bid specifications, and federal motor vehicle safety standards. FTA has tried to carry out the intent of the law in a way that builds on current practices by many recipients and that improves the monitoring of compliance in the least burdensome manner. Reviews may be conducted by the recipient's staff or by a contractor for the recipient. The regulations require a resident inspector who is not an agent or an employee of the manufacturer to review for the recipient the

manufacturer's compliance with the specification at the manufacturing site. An inspection is not required when the procurement is for unmodified vans, 10 or fewer buses acquired by an operator serving an urbanized area with a population of more than 200,000 persons, or 20 or fewer buses acquired by an operator serving other than urbanized areas or urbanized areas with populations of 200,000 or fewer. The recipient must keep on file and make available to FTA upon request written reports resulting from the reviews. Compliance must be certified on the Annual List of Certifications and Assurances. FTA has published a handbook to assiste with conducting pre-award and post-delivery audits for bus and railcar procurements, which contains copies of all the required certifications to assist recipients in complying with this requirement. A copy of this handbook can be found on FTA's Buy America website.

e. Use of Federally Assisted Property. The recipient must use its federally assisted property for the purpose it was acquired as long as needed, whether or not the Award continues to be supported with federal assistance. Recipients must not encumber property without prior FTA approval. Recipients must immediately notify FTA when changing the use of their federally assisted property or withdrawing that property from use whether by planned withdrawal, misuse, or casualty loss. When the need for federally assisted property no longer exists, *see* disposition requirements in Chapter IV, Subsection 4.n, "Disposition," of this Circular.

(1) Continuing Control. The recipient agrees to maintain continuing control of the use of federally assisted property and constructed improvements to the extent satisfactory to FTA. The recipient agrees to use federally assisted property for appropriate purposes continuously for the duration of the useful life of that property, as required by FTA. If the recipient unreasonably delays or fails to use its federally assisted property during the useful life of that property, the recipient agrees that it may be required to return the entire amount of the federal assistance expended on that property to FTA. The recipient further agrees to notify FTA immediately when any federally assisted property is withdrawn from use under the Award or when any federally assisted property is used in a manner substantially different from the representations the recipient made in the Grant or Cooperative Agreement for the Award.

The recipient may make federally assisted property available for use in other Awards currently or previously supported by the Federal Government, provided such use will not interfere with the work on the Award for which it was originally acquired. First preference must be given to other Awards supported by FTA; and second preference must be given to programs or projects of other federal agencies. Use for non-federally assisted programs or projects is permissible in some cases, as described in the discussion of incidental use in this Chapter.

The recipient must not use property acquired with federal assistance to provide services to compete unfairly with private companies that provide equivalent services. Non-transit use of FTA assisted property is acceptable so long as it is incidental, does not interfere with transit use (transit has priority), and income generated is retained by

the recipient for transit use. The recipient is reminded that it must not use equipment acquired with federal assistance to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by federal statute for as long as the Federal Government retains an interest in the equipment.

The recipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement, or any other obligation pertaining to the federally assisted property that in any way would affect the continuing federal interest in the use of that federally assisted property, without written FTA approval.

(2) Shared Use. Shared use of federally assisted property requires prior written FTA approval except when it involves coordinated public transit human services transportation. Shared use projects should be clearly identified and sufficient detail provided to FTA at the time of review before an Award to determine allocable costs related to non-transit use for construction, as well as on-going maintenance, and operation costs. *See* section 2 of this chapter, above, for further information related to shared use for real property whose principles apply to equipment.

(3) Incidental Use. Any incidental use of federally assisted property will not exceed that permitted under applicable federal laws, regulations, and directives. Incidental use requires prior FTA approval except when it involves coordinated public transit human services transportation. Consult your FTA regional or metropolitan office prior to incorporating incidental use activities in projects. *See* section 2 of this chapter, above, for further information related to incidental use for real property whose principles apply to equipment. Incidental use will be permitted if:

(a) The incidental use does not interfere with the recipient's project or public transportation operations,

(b) The recipient fully recaptures all costs related to the incidental use from the non-transit public entity or private entity, including all applicable excise taxes on fuel for fueling facilities and wear and tear to capital improvements,

(c) The recipient uses revenues received from the incidental use for capital and/or operating expenses that were or will be incurred to provide the public transportation, and

(d) Private entities pay all applicable excise taxes on fuel.

(4) Delay or Failure to Use Federally Assisted Property. Recipients are required to use federally assisted property continuously and appropriately throughout the useful life of the property. Recipients may be required to return the entire amount of federal assistance spent on federally assisted property if, during its useful life, the recipient has unreasonably delayed or failed to use the federally assisted property. Recipients are also required to notify FTA before property is removed from the transit service originally intended at the time of the Award and if property is put to additional or substitute uses.

f. Minimum Useful Life of Federally Assisted Property. FTA provides a minimum useful life policy for capital rolling stock, trolleys, ferries, and facilities in this circular. If property is prematurely withdrawn from service, FTA must be immediately notified (*See* disposition before the end of the useful life).

(1) Determining Minimum Useful Life for Federally Assisted Property. The recipient should identify the method used to determine the minimum useful life. Acceptable methods to determine minimum useful life include but are not limited to:

(a) Generally accepted accounting principles,

(b) Independent evaluation,

(c) Manufacturer's estimated useful life,

(d) Internal Revenue Service guidelines,

(e) Industry standards,

(f) Recipient experience,

(g) The recipient's independent auditor who needs to provide his or her concurrence that the useful life assigned to the property is reasonable for depreciation purposes, and

(h) Proven useful life developed at a federal test facility.

(2) FTA Minimum Useful Life Policy for Rolling Stock and Ferries. The useful life of rolling stock and ferries begins on the date the vehicle is placed in revenue service and continues until it is removed from revenue service. The minimum useful life in years refers to total time in transit revenue service, not time spent stockpiled or otherwise unavailable for regular transit use. The minimum useful life in miles refers to total miles in transit revenue service. Non-revenue miles and periods of extended removal from service do not count towards useful life. Changes in operating circumstances, including unforeseen difficulty maintaining vehicles, higher cost of fuel, and changes in local law limiting where vehicles can be operated do not excuse minimum useful life requirements.

Recipients of federal assistance need to specify the expected minimum useful life in invitations for bids when acquiring new vehicles. Minimum useful life is determined by years of service or accumulation of miles whichever comes first, by asset type as follows:

(a) Buses.

1 Large, heavy-duty transit buses including over-the-road buses (approximately 35' – 40' or larger including articulated buses):

At least 12 years of service or an accumulation of at least 500,000 miles.

2 Small size, heavy-duty transit buses (approximately 30'):

At least 10 years or an accumulation of at least 350,000 miles.

3 Medium-size, medium-duty transit buses (approximately 25 '– 35'):

At least seven years or an accumulation of at least 200,000 miles.

4 Medium-size, light-duty transit buses (approximately 25' – 35'):

At least five years or an accumulation of at least 150,000 miles.

(b) Light Duty Vehicles,

Other light-duty vehicles used as equipment and to transport passengers (revenue service) such as regular and specialized vans, sedans, and light-duty buses including all bus models exempt from testing in the current 49 CFR part 665:

At least four years or an accumulation of at least 100,000 miles.

(c) Trolleys.

The term "trolley" is often applied to a wide variety of vehicles. Thus, the useful life depends on the type of "trolley." FTA classifies "trolleys" and the suggested useful life as described below. For disposition actions, FTA will use the following minimum useful life determinations:

1 A fixed guideway steel-wheeled "trolley" (streetcar or other light rail vehicle): At least 25 years,

2 A fixed guideway electric trolley-bus with rubber tires obtaining power from overhead catenary: At least 15 years, and

3 Simulated trolleys, with rubber tires and internal combustion engine (often termed "trolley-replica buses"): Please refer to bus useful life criteria above.

(d) Rail Vehicles. At time of application, the recipient may propose an alternative useful life to be reviewed by FTA. A recipient that regularly measures lifespan by hours of operations, or by any other measure, may develop an appropriate methodology for converting its system to years of service. The reasonableness of such methodologies will be subject to examination, particularly if the recipient proposes to retire a rail vehicle before reaching FTA's useful life. At least 25 years.

(e) Ferries. The useful life of a ferry depends on several factors, including the type and use of the ferry. FTA recommends using one of the methods outlined in

Chapter IV, Subsection 4.f.(1) above or offers the following suggested minimum service lives:

1 Passenger Ferries: At least 25 years,

2 Other Ferries (without refurbishment): At least 30 years, and

3 Other Ferries (with refurbishment): At least 60 years.

(f) Facilities. Determining the useful life of a facility must take into consideration such factors as the type of construction, nature of the equipment used, historical usage patterns, and technological developments. Based on any of the methods identified above in Chapter IV, Paragraph 4.f(1), a railroad or highway structure has a minimum useful life of 50 years, and most other buildings and facilities (concrete, steel, and frame construction) have a useful life of 40 years.

g. Rolling Stock Rebuilding Policies. FTA laws, regulations, policies, and procedures permit the use of capital assistance for vehicle rebuilding programs that meet the vehicle requirements in the Federal Motor Carrier Vehicle Safety Standards, 49 CFR part 571, and Americans with Disabilities Act Accessibility Specifications for Transportation, 49 CFR part 38. Requirements are summarized below:

(1) Buses to be rebuilt must be at the end of their minimum useful life and in need of major structural and/or mechanical rebuilding. The age of the bus to be rebuilt is its years of service at the time the rebuilding begins. The eligibility of this major capital bus rebuild work is in addition to the eligibility of vehicle overhauls as described in Chapter IV, Subsection 4.h, "Rolling Stock Overhauls," below. Recipients should contact the regional or metropolitan office to determine the extent which the useful life of the bus is affected by the rebuild. The minimum extension of useful life is four years.

With prior approval, FTA may permit the recipient to rebuild a vehicle that has not yet met its minimum useful life. In such circumstances, the minimum useful life of the rebuilt vehicle is the remaining useful life of the vehicle at time of rebuild plus four years (*e.g.*, for a 12-year bus rebuilt at 11 years, the remaining useful life would be 5 years).

(2) Railcars to be rebuilt must have reached the end of their minimum useful life (end-of-life rebuild). The minimum extension of useful life is ten years. The eligibility of this major capital rail rebuild work is in addition to the eligibility for vehicle overhauls as described below in Chapter IV, Subsection 4.h, "Rolling Stock Overhauls."

With prior approval, FTA may permit the recipient to rebuild a railcar that has not yet met minimum useful life. In such circumstances, the minimum useful life of the rebuilt railcar is the remaining useful life in the railcar at time of rebuild plus ten years (*e.g.*, for a 25-year railcar rebuilt at 24 years, the remaining useful life would be 11 years).

Depending upon the extent of rebuilding planned, the rebuild may be subject to the Americans with Disabilities Act (ADA) requirements.

h. Rolling Stock Overhauls. Rolling stock overhauls are an eligible capital expense as preventive maintenance. This eligibility for capital assistance applies also to rolling stock that has been leased or acquired by a contractor, and to contracted service. Overhauls are usually done to make sure rolling stock reaches its useful life. Overhaul does not extend the useful life of rolling stock. This eligibility is in addition to eligibility of rebuilding specifically discussed above in Chapter IV, Subsection 4.g. For rolling stock to be overhauled, it must have accumulated at least 40 percent of its useful life.

i. Rolling Stock Repowering. Rolling stock repowering involves replacing a vehicle's propulsion system with a propulsion system of a different type (*e.g.*, replacing a diesel engine with an electric battery propulsion system). Rolling stock repowering is permitted for buses that have met at least 40 percent of their useful life in which case it must be designed to permit the bus to meet its useful life requirements or as part of a rebuild in which case it must extend the useful life by at least 4 years.

j. Remanufactured Vehicles. Remanufactured vehicles are defined by FTA as previously owned/used vehicles that have undergone or require substantial structural, mechanical, electrical, and or cosmetic rebuilding, restoration or updating and that is to be acquired or leased by a new party. Remanufactured vehicles must meet all of the requirements for new models (*e.g.*, useful life, bus testing, *etc.*).

k. Rolling Stock Spare Ratio Policies. Spare ratios will be taken into account in the review of Awards proposed to replace, rebuild, or acquire additional vehicles. Spare ratio is defined as the total number of spare vehicles available for fixed-route service (regardless of type) divided by the total number of fixed-route vehicles required for annual maximum service (regardless of type). Spare ratio is usually expressed as a percentage, *e.g.*, 100 vehicles required for maximum fixed-route service and 20 spare vehicles is a 20 percent spare ratio. Spare ratios are calculated for the transit system as a whole, not by vehicle type.

For purposes of the spare ratio calculation, "vehicles operated in maximum fixed-route service" is defined as the total number of revenue vehicles operated to meet the annual maximum service requirement. This is the revenue vehicle count during the peak week, day and hours maximum service is provided. It excludes atypical days and special events.

(1) Bus Fleet. The basis for determining a reasonable spare bus ratio takes local circumstances into account. The number of spare buses in the active fleet for recipients operating 50 or more fixed-route revenue vehicles should not exceed 20 percent of the number of vehicles operated in maximum fixed-route service.

Buses delivered for future expansion and buses that have been replaced, but are in the process of being disposed of, are not included in the calculation of spare ratio.

For each application identified to acquire vehicles, the applicant must address the subjects of current spare ratio, the spare ratio anticipated at the time the new vehicles are introduced into service, disposition of vehicles to be replaced including information on age and mileage, and the applicant's conformance with FTA's spare ratio guideline. An applicant is required to notify FTA if the spare ratio computation on which the application is based is significantly altered before the Award is made.

(2) Rail Fleet. Because rail transit operations tend to be highly individualized, FTA has not established a specific number to serve as an acceptable spare ratio for rail transit operations. Nevertheless, rail operators should be aware that the recipient's rail vehicle spare ratio and the rationale underlying that spare ratio will be examined during the triennial review whenever FTA assistance is used to purchase or rebuild rail vehicles.

The following guidance should be used to support an operator's proposed rail vehicle spare ratio when the spare ratio is under review by FTA:

(a) An operator of a rail system must have in its file available upon request by FTA a rail fleet management plan that addresses operating policies (level of service requirements, train failure definitions, and actions), peak vehicle requirements (service period and make-up, *e.g.*, standby trains), maintenance and overhaul programs (scheduled, unscheduled, and overhaul), system and service expansions, railcar procurements and related schedules, and spare ratio justifications.

(b) The spare ratio justification should consider the average number of railcars out of service for scheduled maintenance, the unscheduled maintenance and overhaul program, the allowance for ridership variation (historical data), ridership changes that affect railcar needs caused by expansion of the system or services, the contingency for destroyed railcars, and railcar procurements for replacements and system expansions.

(c) Railcars delivered for future expansion and railcars that have been replaced, but are in the process of being disposed of, should not be included in the calculation of spare ratio.

(d) Peak Vehicle Requirements include "standby" trains that are scheduled, ready for service, and have a designated crew.

(e) Factors that may influence spare ratios are the type of equipment (locomotive hauled trains; married pair units or single railcars, equipment design, reliability, and age), environmental conditions (weather, above ground or underground operation, loading and track layout), operational policies (standby trains, load factors, headways), maintenance policies (conditions for removing railcars from service, maintenance during nights and weekends, and labor agreement conditions), and maintenance facilities and staff capabilities.

(3) Spare Ratio Deviation. Recipients of buses recently procured may temporarily exceed their spare ratio thresholds. In those cases, recipients may seek a short term deviation from the spare ratio requirements for small deviations. Recipients should prepare a brief justification explaining the reason for the deviation, a date by which the fleet spare ratio will come into compliance with the general requirements, and the recipient's plans to come into compliance. The deviation will generally be granted for no more than 2 years and must be approved by the Regional Administrator either in writing or by approval of the Award.

Recipients must promptly inform the Regional Office of any significant changes related to spare ratios, including plans for disposition or acquisition of vehicles and changes in vehicle needs.

(4) Contingency Fleet. FTA recognizes two types of vehicles—active and contingency. Revenue rolling stock stockpiled in a contingency fleet in preparation for emergencies must have met their minimum useful life requirements and must be properly stored, maintained, and documented in a contingency plan. FTA will also permit agencies to include vehicles that have met their minimum useful life in their contingency fleet if an agency is introducing zero emission vehicles into its fleet. These vehicles are not included in the calculation of spare ratio. Contingency plans are subject to review during triennial reviews and other FTA oversight reviews. Any rolling stock not supported by a contingency plan will be considered part of the active fleet.

l. Leases. FTA and standard accounting rules distinguish between operating and capital leases.

(1) Operating Lease. In general, an operating lease is a lease that::

(a) Has a term that is less than 75 percent of the useful life of the asset;

(b) Provides that the recipient will not become the owner of the asset at the end of the term of the lease;

(c) Does not contain a bargained-for-option date/price; and

(d) The present value of the rent is less than 90 percent of the value of the property.

A recipient may enter into an operating lease as lessee (the party leasing the property from another) without following any special rules if it receives no federal operating assistance. If it receives federal operating assistance, this business opportunity (to lease) must be competed.

(2) Capital Lease.

(a) Capital Leases in General. The FAST Act amended the definition of "capital project" to remove the requirement that a capital lease be "subject to regulations

that the Secretary prescribes limiting the leasing arrangements to those that are more cost-effective than purchase or construction." This applies to any lease financed with FTA assistance. As a result, 49 CFR part 639, subpart C pertaining to cost effectiveness requirements does not apply to capital leases. However, the other provisions of 49 CFR part 639 do apply to capital leases of property except for the leases of rolling stock or related equipment as discussed further in subparagraph (2)(b) below:

A lease may qualify for capital assistance if it meets the following criteria:

1 The capital asset to be acquired by lease is eligible for capital assistance, and

2 There is or will be no existing federal interest in the capital asset as of the date the lease will take effect.

The cost effective provisions of part 639 of title 49, Code of Federal Regulations, or any successor regulation, and implementing guidance applicable to leasing shall not apply to any capital lease. Except for capital leases of rolling stock or related equipment, other provisions of part 639, however, apply to capital leases .

For the purposes of this definition, it does not matter if the lease qualifies as a tax exempt municipal lease in which the private lender holding the lease would not pay income taxes on the interest earned from the lease payments received.

(b) Capital Leases Under Section 3019(c) of the FAST Act. Section 3019 of the FAST Act established an "Innovative Procurement" program, of which one purpose is to establish new conditions pertaining to the leasing of "rolling stock or related equipment." For purposes of Section 3019(c), a capital lease is defined as any agreement in which a recipient acquires the right to use rolling stock or related equipment for a specified period of time, in exchange for a periodic payment. Therefore, section 3019 provisions are limited to leases of rolling stock or related equipment.

1 A lease of rolling stock or related equipment may qualify for capital assistance if it meets the following criteria:

a The capital asset to be acquired by lease is eligible for capital assistance, and

b There is or will be no existing federal interest in the capital asset as of the date the lease will take effect.

2 In general a capital lease is determined when:

a The lease cannot be cancelled until its expiration date, unless the parties thereto agree, and

b Any one of the following tests is true:

(i) The term of the lease is equal to or greater than 75 percent of the useful life of the asset,

(ii) The recipient will become the owner of the asset at the end of the lease term,

(iii) The lease contains a bargained-for option date/price, or

(iv)The present value of the rent is equal to 90 percent of the value of the property, and

3 Eligible lease costs of rolling stock or related equipment include the costs of the rolling stock or related equipment, associated financing costs including interest, legal fees, and financial advisor fees; ancillary costs such as delivery and installation charges and maintenance costs. A capital lease may also require that the lessor provide maintenance of the rolling stock or related equipment covered by the lease. The purchase calculation should include an estimate of residual value.

Removable power sources for zero emission vehicles may be acquired separately as capital leases.

4 Based on standard FTA award management guidelines, recipients must maintain an inventory of assets acquired through capital leasing and must maintain on their accounting records the lease liability.

5 Terms.—A recipient shall negotiate the terms of any lease agreement that the recipient enters into.

6 Applicability of procurement requirements.—

a Lease requirements.— Part 639 of title 49, Code of Federal Regulations, or any successor regulation, and implementing guidance applicable to leasing shall not apply to a capital lease of rolling stock or related equipment.

b Buy America.—The requirements under section 5323(j) of title 49, United States Code, shall apply to a capital lease.

c Removable power sources are subject to section 2 CFR § 200.88 Simplified Acquisition Threshold. That is leases under the threshold (currently $150,000) may use small purchase procedures.

7 Lease Reporting Requirements. Not later than 3 years after the date in which a recipient enters into a capital lease for rolling stock or related equipment, the recipient must submit a report in the EAMS that contains:

a An evaluation of the overall costs and benefits of leasing rolling stock, and

b A comparison of the expected short-term and long-term maintenance costs of leasing versus buying rolling stock.

(c) Capital Lease Not Covered by Section 3019 of the FAST Act. Section 3019 of the FAST Act applies only to rolling stock or related equipment (*i.e.*, equipment related to rolling stock). Section 3019 restrictions, particularly the prohibition against the provisions of FTA's leasing regulations, 49 CFR part 639, do not apply to a lease of equipment that is not rolling stock or related to rolling stock, except that the cost effectiveness provisions of 49 CFR part 639 do not apply to any capital lease.

(d) The Recipient As Lessor. In all instances in which the recipient is a lessor (the party leasing an asset to another), the recipient must obtain FTA's written concurrence before leasing federally assisted assets to others. In addition, for equipment leasing, recipients must comply with FTA's Charter Service regulations, School Bus Operations regulations, and with requirements below:

(e) Leasing FTA Assisted Assets to Others for Transit Service. The recipient may enter into a contract for leasing its federally assisted property to a private operator (the lessee). The lease must be subject to and incorporate by reference the terms and conditions of the Grant or Cooperative Agreement. Under this arrangement, the recipient (the lessor) should include the following provisions in the proposed lease agreement:

1 The federally assisted property shall be operated by the lessee to serve the best interests and welfare of the recipient, lessor, and the public; the terms and conditions for operation of service imposed by the recipient shall be evidenced in a service agreement,

2 The lessee shall maintain the federally assisted property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the recipient; the recipient, lessor, and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the federally assisted property, and

3 The lease needs to cross reference a service agreement. A default under the lease is a default under the service agreement and vice versa.

m. Management of Federally Assisted Property. Rolling stock and equipment management procedures include the following minimum requirements:

(1) Equipment records must be maintained by the recipient. Records must include the following:

(a) A description of the asset,

(b) The identification number or serial number,

(c) The entity or individual that holds title to the asset,

(d) The source of funding (the FAIN number under which it was procured),

(e) The acquisition date,

(f) The cost of the asset,

(g) The percentage of federal participation in the cost,

(h) The location,

(i) The use and condition,

(j) The useful life, and

(k) The disposition data, including the date of disposal and sale price, or, where applicable, method used to determine its fair market value.

(2) A physical inventory of the equipment must be taken and the results reconciled with equipment records at least once every two years. Any differences must be investigated to determine the cause of the difference. Property should be tagged or otherwise identified as federally assisted property.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of federally assisted property. The recipient must investigate and document any loss, damage, or theft.

(4) Maintenance and Warranty.

(a) Maintenance. Adequate maintenance procedures must be developed and implemented to keep the federally assisted property in good condition. Recipients must maintain federally assisted property in good operating order and in compliance with any applicable federal regulations that may be issued and follow applicable guidance that may be issued, except to the extent that FTA determines otherwise in writing. Recipients must have a written vehicle maintenance plan and a facility/equipment maintenance plan. These plans should describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals.

(b) Records and Oversight. Recipients must keep satisfactory records pertaining to the use of federally assisted property, and submit to FTA upon request such information as may be required to assure compliance with federal requirements. Recipients must have appropriate procedures in place to ensure that management and oversight of federally assisted property is properly administered for assets controlled by subrecipients.

(c) Warranties. Warranties, when part of rolling stock and equipment contracts, should provide for correction of defective or unacceptable materials or workmanship. These warranties should specify coverage and duration and meet currently available industry standards. A general warranty incorporating industry standards and an extended warranty are eligible capital costs. FTA's Best Practices Procurement Manual encourages recipients to evaluate the cost of an extended warranty in an analysis separate from the equipment's acquisition cost, in order to make a good business decision. Recipients are responsible for:

1 Establishing and maintaining a system for recording warranty claims; this system should provide information needed by the recipient on the extent and provisions of coverage and on claims processing procedures, and

2 Identifying and diligently enforcing the system for recording warranty claims.

n. Disposition of Equipment and Supplies. Disposition requirements apply to equipment that has met its useful life, as well as equipment that is prematurely withdrawn from service before its useful life has been ended. FTA retains financial interest in equipment with a unit value exceeding $5000, and supplies with an aggregate value exceeding $5000, even if useful life has been met. State recipients must dispose of federally assisted property acquired under an Award by the state in accordance with state laws and procedures. Subrecipients of states will follow such policies and procedures allowed by the state with respect to disposition of equipment acquired under an FTA Award.

(1) Calculating the Federal Interest. FTA is entitled to its share of the remaining federal interest upon disposition of federally assisted property before the end of its useful life or for a value greater than $5,000 after the useful life has been met.

(a) The federal interest is determined by calculating the fair market value of the federally assisted property immediately before the occurrence prompting the withdrawal of that property from appropriate use (*e.g.,* sale, loss, *etc.*). The federal interest that the recipient is required to return to FTA is the greater of FTA's share of the unamortized value of the remaining useful life per unit, based on straight line depreciation of the original purchase price or the federal share of the sales price. The following example is provided to determine the straight-line depreciation of a vehicle: For a vehicle with a 12-year, 500,000 mile minimum useful life, the vehicle's value decreases each year by one-twelfth of its original purchase price. Alternatively, the value decreases for each mile driven 1/500,000 of its original purchase price. The unamortized value of the remaining useful life

per unit is the value obtained by calculating the straight line depreciation based on either miles or years whichever is more advantageous to the recipient.

(b) Any exchange of funds or trade of equipment or services in consideration for the federally assisted property is considered a sale. The sales price is based on the value of the funds, equipment, or services provided by the purchaser, and the federal share of that price is calculated as described above. Recipients and purchasers may not separate any portion of the sales prices as reimbursement in order to reduce the federal share.

(c) If the recipient is authorized to sell the property, it will be required to employ proper sales procedures that ensure the highest possible return is achieved in the disposition of the federally assisted asset.

(d) Reimbursement to FTA will be an amount calculated by multiplying the total aggregate fair market value at the time of disposition, or the net sale proceeds, by the percentage of FTA's participation in the original Award. The recipient's transmittal letter should state whether the equipment will be retained or sold. Use of sales proceeds are discussed elsewhere.

(2) Replacement at End of Minimum Useful Life. Federally assisted property to be replaced must have achieved at least the minimum useful life. For purposes of bus replacement, the age of the bus to be replaced is its years of service or mileage at the time the proposed new bus is introduced into service. For purposes of a rail vehicle replacement, the age of the vehicle to be replaced is its age at the time the new vehicle is introduced into service. Official property records (or a Rolling Stock Status Report), in which future needs (expansion and replacement) are discussed, must be available upon request by FTA. Proceeds from the sale of real property, equipment, or supplies are not program income.

(3) Disposition or Inappropriate Use Before the End of the Asset's Useful Life. Any disposition of federally assisted property before the end of its useful life requires prior FTA approval. FTA is entitled to its share of the remaining federal interest.

(a) Transfer of Assets No Longer Needed. For an asset that has not met its useful life and with prior FTA approval, the recipient may follow procedures for 49 U.S.C. § 5334(h)(1) – (3) to transfer federally assisted property (real property, including land, or equipment) to a public agency for non-public transportation use provided the recipient can demonstrate that:

1 The asset will remain in public use for at least five years after the date the asset is transferred,

2 There is no purpose eligible for assistance for which the asset should be used,

3 The overall benefit of allowing the transfer is greater than the FTA interest in liquidation and return of FTA's remaining federal interest in the asset, after considering fair market value and other factors, and

4 Through an appropriate screening or survey process (usually by following procedures for publication in the *Federal Register*), that there is no interest in acquiring the asset for the federal use if the asset is a facility or land.

Additional information regarding this type of disposition is available from the FTA regional or metropolitan office.

(b) Casualty, Fire, Natural Disaster, and Misused Property. When federally assisted property is lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. If any damage to the federally assisted property results from abuse or misuse occurring with the recipient's knowledge and consent, the recipient agrees to restore the federally assisted property to its original condition or refund the value of the federal interest in that property.

The recipient may fulfill its obligations to remit the federal interest by either:

1 With prior FTA approval, following the Like-Kind Exchange Policy as described in subparagraph (d) below, or

2 Returning to FTA an amount equal to the remaining federal interest in the withdrawn federally assisted property.

(c) Insurance Proceeds. If the recipient receives insurance proceeds when federally assisted property has been lost or damaged by fire, casualty, or natural disaster, the recipient agrees to:

1 Apply those proceeds to the cost of replacing the damaged or destroyed federally assisted property taken out of service, or

2 Return to FTA an amount equal to the remaining federal interest in the federally assisted property that is lost, damaged, or destroyed.

The federal interest does not depend on the extent of insurance coverage or on the insurance adjustment received.

Examples appear on the next page:

Application of Insurance Proceeds

Example 1

Insurance Proceeds **Greater than** the
Remaining Federal Interest in the Damaged or Destroyed Property.

The remaining federal interest in the damaged or destroyed property is $1,800. The recipient receives insurance proceeds in the amount of $2,500. The recipient is required to apply $1,800 of the $2,500 insurance proceeds towards the federal share of replacing the destroyed property.

Cost of replacement property: (Total Project Cost)		$6,000
	Fed Share: $4,800	Local: $1,200
Less federal share of insurance proceeds:		<$1,800>
Additional Federal Funds:		$3,000

If the funding ratio for this property were 80 percent federal and 20 percent non-federal, the replacement property could be purchased for $4,800 federal/$1,200 non-federal funds. The insurance proceeds of $1,800 needed to cover the remaining federal interest in the damaged and destroyed property must first be applied to the federal share of the replacement property. The recipient could receive an additional $3,000 in federal assistance. The recipient must provide $1,200 in non-federal share to replace the property.

Example 2

Insurance Proceeds **Less than** the
Remaining Federal Interest in the Damaged or Destroyed Property:

If the federal interest in the damaged or destroyed property is $1,800 and the recipient receives insurance proceeds in the amount of $500, the recipient is required to apply the $500 of insurance proceeds and $1,300 of non-federal funds to equal the remaining federal interest, towards the cost of the replacement property.

Cost of replacement property: (Total Project Cost)		$6,000
	Fed Share: $4,800	Local: $1,200
Less: Insurance Proceeds:	$500	
Non-federal funds to cover the remaining federal interest:	$1,300	
Additional Federal Funds:	$3,000	

If the funding ratio for this property were 80 percent federal and 20 percent non-federal, the replacement property could be purchased for $4,800 federal/$1,200 non-federal funds. The insurance proceeds of $500 plus an additional $1,300 in non-federal funds are needed to cover the remaining federal interest in the damaged and destroyed property. These funds must be applied to the federal share of the replacement property. The recipient could receive an additional $3000 in federal assistance, and must provide an additional $1200 in other non-federal share, to replace the property. In total, the $6,000 is therefore covered by $500 in insurance, $3,000 in Federal Funds and $2,500 in non-Federal funds.

(d) Like-Kind Exchange Policy. With prior FTA approval, equipment may be disposed of before the end of its minimum useful life. In lieu of returning the federal share to FTA, a recipient may elect to transfer the remaining federal interest to a replacement vehicle of like kind. "Like-Kind" is defined as a bus for a bus with a similar useful life and a rail vehicle for a rail vehicle. Under the Like-Kind Exchange Policy, proceeds from the federal share of the vehicle disposition are not returned to FTA; instead, all proceeds are re- invested in acquisition of the like-kind replacement vehicle. If the disposition proceeds are less than the amount of the federal interest in the vehicle at the time it is being replaced, the recipient is responsible for providing the difference, along with the recipient's share of the cost of the replacement vehicle. If sales proceeds are greater than the amount of the federal interest in the vehicle traded in or sold, the investment of all proceeds in acquisition of the like-kind replacement vehicle results in a reduction of the gross project cost. An example of like-kind exchange is:

Example

A recipient purchased a new bus in 2009 for $220,000; 80 percent of the total price, or $176,000, was federal assistance while 20 percent, or $44,000, was non-federal. Thus, there was an initial $176,000 "federal interest" in the new vehicle.

Instead of keeping the bus in service for 12 years, the FTA useful life of a new bus, the recipient chose to sell the bus after six years and replace it with a new vehicle.

Since the bus had a minimum useful life of 12 years and its depreciation was determined on a "straight-line" basis, the depreciated value of the vehicle after six years was half the original price, or $110,000. The remaining federal interest was 80 percent of that figure, $88,000.

Assume, for example, the recipient realized $80,000 from the sale of the six- year-old bus, or $30,000 less than the straight-line depreciated value of the original vehicle.

The recipient purchased the new bus in 2015 for $240,000 calculated as follows on the next page:

Net project cost calculation:	
Gross project cost of new bus	$240,000
Less straight-line depreciated value of replaced bus	- 110,000
Net project cost	$130,000
Federal share 80%	$104,000
Non-federal share 20%	$ 26,000
TOTAL	$240,000
Sources of funds for the new bus	
Net sales proceeds from replaced bus/ New non-federal cash	$ 80,000
Shortfall when additional amounts are required to meet the straight-line depreciated value	$ 30,000
Amount of the remaining useful life to be subtracted from the added amount available for the new bus	$110,000
Federal share for new bus	$ 104,000
Non-federal share of net project cost	$ 26,000
Net Project Cost of New Bus	$ 130,000
TOTAL	$ 240,000

The federal interest in the new bus is $192,000 ($88,000 transferred from the old vehicle and $104,000 in the new).

(e) If the property has never been used for appropriate purposes, the recipient shall sell the property and pay the FTA the greater of FTA's share of the fair market value or the entire amount of federal assistance spent on that federally assisted property

(4) Disposition or Use of Assets for Other Than Purposes of the Award After the End of Their Useful Life.

(a) Retain and Use Elsewhere. After the minimum useful life of federally assisted property is reached or the property is no longer needed for the original Award, it may be used by the recipient for other transit projects or programs. FTA prior approval of this alternative is not required. FTA retains its interest in the federally assisted property if its fair market value exceeds $5,000.

(b) Disposition of Property with a Fair Market Value of More Than $5,000. After the useful life of federally assisted property is reached, or the property is no longer needed for the original award, rolling stock and equipment with a current market value exceeding $5,000 per unit, or unused supplies with a total aggregate fair market value of more than $5,000, may be retained or sold. Rolling stock and

equipment that is sold may have the amount due FTA reduced by an amount of $500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(c) Sell and Use the Proceeds for Other Capital Awards, 49 U.S.C. § 5334(h)(4). After the useful life is met, or the property is no longer needed, and with prior FTA approval, the recipient may sell its federally assisted property for which there is no longer any public transportation purposes and use the proceeds to reduce the gross project cost of other future FTA eligible capital transit Awards. The recipient is expected to record the receipt of the proceeds in the recipient's accounting system, showing that the funds are restricted for use in a future capital Award, and reduce the liability as the proceeds are applied to one or more FTA approved capital Awards. If new applications are not immediately anticipated, the recipient must inform the appropriate FTA contact of the disposition within a reasonable amount of time. Otherwise, the subsequent capital application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction. The proceeds cannot retroactively be applied to an existing Award or project unless the Award is still open.

(d) Disposition of Property with a Fair Market Value of $5,000 or Less Value. After the useful life of its federally assisted property is reached, rolling stock and equipment with a unit market value of $5,000 or less, or supplies with a total aggregate market value of $5,000 or less, may be retained, sold, or otherwise disposed of with no obligation to reimburse FTA. Records of this action must be retained. FTA approval of this action is not required.

(e) Transfer of Rolling Stock—Recipient-to-Recipient. With prior FTA approval, a recipient may transfer rolling stock that has not yet served its useful life to another recipient. The federal interest in the rolling stock will be transferred with the rolling stock, and therefore, there is no obligation to reimburse FTA. However, no additional FTA assistance may be used to acquire the vehicles. Both recipients should coordinate with their FTA Regional Office(s). The required information must be provided by the appropriate contacts for both affected transit agencies, which agencies might be in different Regional Offices. When the rolling stock has remaining useful life, the following information should be submitted:

1 A Written Request for Approval to Transfer or Receive Vehicles. The request should include the transferor/transferee recipient's name, list of vehicles (year, make, model), date placed in revenue service, date removed from revenue service, federal award identification number that was assigned to the original FTA Award that financed the vehicle, mileage, remaining useful life, federal share of remaining useful life, and reasons for transfer.

2 A Board Resolution (or Other Appropriate Legal Action) from Each Recipient. The transferring recipient's board resolution (or other appropriate legal action) should identify the receiving recipient, include a statement that the vehicles are no longer required, a list of the vehicles to be transferred

including the Vehicle Identification Numbers (VINs) and the remaining federal interest that is transferred to the receiving recipient.

The receiving recipient's board resolution (or other appropriate legal action) should identify the transferring recipient, a statement that the vehicles are needed for revenue service, a list of the vehicles to be acquired including VINs, the remaining federal interest for each vehicles, agreement that the vehicles will be maintained in accordance and in compliance with FTA requirements, and that the transferred vehicles will be included in its equipment inventory records.

3 A Rolling Stock Status Report. Each recipient should provide a Rolling Stock Status Report that includes all information as identified in Appendix E. The Rolling Stock Status Report should reflect the impact that the transfer/addition of the vehicles will have on the recipient's total fleet and spare ratio. If approved, the receiving recipient will be directed to include the transferred vehicles in its next application for federal assistance.

(f) Unused Supplies. For the disposition of supplies for which there is no transit use with a total aggregate fair market value that exceeds $5,000, the recipient must compensate FTA for its share, or transfer the sales proceeds to another Award to reduce the gross project cost of other future capital project(s), 49 U.S.C. § 5334(h)(4).

o. Insurance. At a minimum, the recipient agrees to comply with the insurance requirements normally imposed by its state and local laws, regulations, and ordinances, except to the extent that the Federal Government determines otherwise in writing.

(1) Flood Insurance. The Recipient agrees to have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), for any building located in a special flood hazard area (100-year flood zone), before receiving federal assistance to acquire, construct, reconstruct, repair, or improve that building. Additionally, the building and its contents must be covered by flood insurance in an amount at least equal to the federal investment (less estimated land cost) or equal to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968. Current limits are $500,000 per building and $500,000 for the contents of each building.

FTA has defined building and contents coverage in its Emergency Relief rule, 49 CFR part 602, as follows:

Building. For insurance purposes, a structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site. This includes manufactured or modular office trailers that are built on a permanent chassis, transported to a site in one or more sections, and affixed to a permanent foundation.

Contents coverage. For insurance purposes, contents are personal property within a building, including fixtures, machinery, equipment and supplies. In addition to the costs to repair or replace, contents insurance coverage shall include the cost of debris removal and the reasonable cost of removal of contents to minimize damage.

(2) Minimum Insurance. The recipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal assistance as provided to property owned by the recipient.

(3) Insurance Proceeds. If the recipient receives insurance proceeds when federally assisted property has been lost or damaged by fire, casualty, or natural disaster, the recipient agrees to:

(a) Apply those proceeds to the cost of replacing the federally assisted property that is damaged or destroyed or taken out of service (Listed on the preceding pages are two examples of the application of insurance proceeds.), or

(b) Return to FTA an amount equal to the remaining federal interest in the federally assisted property that is lost, damaged, or destroyed.

(4) Federal Interest. The federal interest is not dependent on the extent of insurance coverage or on the insurance adjustment received.

(5) Flood Risk Management. Executive Order No. 13690, "Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and considering Stakeholder Input," was issued to improve the nation's resilience to flooding and to better prepare for the impacts of climate change. This order identifies a process to avoid action in or impacting the floodplain and minimizing potential harm if an action must occur in or otherwise impact the floodplain. If avoiding the floodplain is not possible, the Order calls for recipients to improve the resilience of communities and federal actions.

5. DESIGN AND CONSTRUCTION OF FACILITIES. Recipients are encouraged to consult FTA's website to review the "Project and Construction Management Guidelines" and the "Construction Project Management Handbook" for guidance on the development and management of construction Awards. These two resources can be found at http://www.fta.dot.gov/images/content_images/FTA_Project_and_CM_Guidelines_-_July_2011_Update_12-01-26.pdf.

The "Project and Construction Management Guidelines" have been developed to assist those involved in advancing transit capital Awards to achieve implementation success in terms of the project scope, function, schedule, cost, and quality. Use of the "Project and Construction and Management Guidelines" should contribute to effective project management on the part of the recipient, and effective oversight and guidance by FTA and the Project Management Oversight (PMO) contractor. Each phase of construction project within an Award should: (1) start with inputs or a baseline, and (2) have a process that refines the project definition and generates outputs that become the inputs or baseline for the subsequent phase. By defining

the requirements for each phase and sound approaches to their accomplishment, the "Project and Construction Management Guidelines" allow recipients to define construction requirements, allocate resources, perform activities, monitor progress, and make adjustments, as required, to obtain the proper information and assure decisions are made at the appropriate time. Adherence to the guidelines should minimize scope changes, schedule slippages, cost overruns, and quality problems, and contribute to fully meeting all the performance objectives of the transit capital Award.

The purpose of the "Construction Project Management Handbook" is to provide guidelines for use by public transit agencies undertaking substantial construction projects within an Award, either for the first time or with little prior experience with construction project management. The handbook provides a comprehensive introduction to construction project management, including the applicability of the principles of project management and of all phases of project development—from project initiation through planning, environmental clearance, real estate acquisition, design, construction, commissioning, and closeout. The handbook provides guidance tailored more to agencies that are constructing maintenance and operational facilities, intermodal terminals, park-and-ride stations, and other similar supporting transit facilities.

a. Environmental Mitigation.

All projects seeking FTA assistance require compliance with NEPA implementing regulations, 40 CFR parts 1500-1508, FHWA and FTA's Environmental Impact and Related Procedures, 23 CFR part 771, and other environmental laws, regulations, and Executive Orders such as regulations pertaining to Section 106 of the National Historic Preservation Act, the Clean Water Act, and the Endangered Species Act. The process for preparing an EIS, EA, and CE under NEPA and completing any environmental permit, approval, review, or study required for a project under federal laws, regulations, and orders is commonly referred to as the "environmental review process," 23 U.S.C. § 139. FTA's policy is "that measures necessary to mitigate adverse impacts be incorporated into the proposed actions." Measures necessary to mitigate adverse impacts are eligible for federal assistance when FTA determines that: (1) the impacts for which the mitigation is proposed actually result from the project under review, and (2) the proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures, 23 CFR § 771.105(d).

FTA considers mitigation measures for all adverse environmental and community impacts under NEPA and for specific resources under Section 4(f), the Endangered Species Act, Section 404 of the Clean Water Act, the project-level conformity requirements of the Clean Air Act, and other federal environmental laws and executive orders that may apply to the particular project. Mitigation measures are developed jointly by FTA and the recipient during the environmental review process to address federal environmental requirements as well as state and local requirements. It is the responsibility of the recipient, in cooperation with the FTA, to implement those mitigation measure stated as commitments in the environmental decision document (*i.e.*,

the Categorical Exclusion (CE), the Finding of No Significant Impact (FONSI), or the Federal Environmental Impact Statement (FEIS)/Record of Decision (ROD).

When FTA makes an Award, the mitigation measures are incorporated by reference in the Grant or Cooperative Agreement for the implementation of the project and the commitment to the mitigation measure becomes a condition of the Award that cannot be removed or substantively changed without FTA's written approval. FTA regional staff monitor the implementation of the identified mitigation commitments through periodic reporting (*e.g.*, quarterly reports), reviews of design, construction inspections, and special meetings, as necessary. The recipient has the responsibility to apprise FTA at the earliest possible time of any problems in implementing the adopted measures and any need for changes.

Information about FTA's environmental review process is available through the FTA Regional Office.

b. Project Management Plan. A written Project Management Plan (PMP) is required by 49 U.S.C. § 5327 for all major capital projects. Recipients are required to develop and implement a PMP for all major capital projects financed by FTA as part of the Project Management Oversight (PMO) Program. This plan covers a recipient's detailed project management strategy to control the project scope, budget, schedule, and quality (49 CFR part 633). Requirements for the PMP can be found in the latest version of Project Management Oversight regulations and FTA's website at http://fta.dot.gov.

As a general rule, if the project meets the definition of major capital project, the recipient must submit the PMP during the application review process. FTA may also require a PMP to be submitted for other Awards as deemed appropriate. If FTA determines the project is a major capital project after the Award has been approved or if FTA determines that a PMP must be submitted for other projects after the Award has been approved, FTA will inform the recipient of its determination and will require submission of the plan. An approval of a PMP can be made after the Award is made.

c. Utility Relocation.

(1) General. The construction of transit systems may require the relocation and/or rearrangement of privately and publicly owned utilities. These utilities include, but are not limited to, systems and physical plants for producing, transmitting, or distributing communications, electricity, gas, oil, crude oil products, water, steam, waste storm water, or other substances, publicly owned fire and police signal systems, and railroads and streets which directly or indirectly serve the public. Relocating and/or rearranging utilities and facilities necessary to accommodate an FTA assisted transit project may be considered an eligible expense as part of the project. Exceptions to this include those situations where state and local law expressly prohibit the financing of such by the public entity.

(2) Eligibility for FTA Assistance. In order to qualify for FTA assistance, the recipient must execute an agreement for relocating or rearranging facilities with the entity responsible for the facilities, which agreement prescribes the procedures for the

relocation and/or rearrangement of the facilities for the purpose of accommodating the construction of the federally assisted project. Prior FTA approval is not required in reaching a utility relocation agreement.

(3) Utility Relocation Agreement. These agreements are distinguishable from third party contracts in that only actual allowable, allocable, and reasonable costs are reimbursable. When the work is to be performed by the public utility's forces, no profit is allowed, and reimbursement is limited to the amount necessary to relocate and/or rearrange the facilities to effect a condition equal to the existing utility facilities. Generally, reimbursement will not provide for greater capacity, capability, durability, efficiency or function, or other betterments or enhancements to the existing utility system, except for meeting current state and local codes. The indirect costs of governmental entities incurred under a utility relocation agreement are eligible for FTA reimbursement only in accordance with an approved Cost Allocation Plan (CAP) as prescribed in 2 CFR part 200, subpart E.

d. Force Account. Force account is the use of a recipient's labor force as a capital expense to carry out a capital project. Force account work may consist of design, construction, refurbishment, inspection, and construction management activities, if eligible for reimbursement as a capital expense under the Award. Force account work does not include Award or project administration activities that are otherwise direct project costs. Force account also does not include preventive maintenance or other items under the expanded definition of capital (*i.e.* security drills, mobility management) that are traditionally not a capital expense. Incremental labor costs for flagging protection, service diversions, or other activities under FTA's expanded definition of capital also do not need to be included. Based on the amount of Force Account work, recipients may be required to submit a justification to use force account and/or the Force Account Plan for FTA approval.

(1) Force account work less than $1,000,000 can be performed without justification or a force account plan.

(2) Force account work $1,000,000 or greater but less than $10,000,000 requires submission of a force account justification prior to award. A recipient must maintain a force account plan in its files prior to incurring costs.

(3) Force account work at $10,000,000 or greater requires submission of a force account justification as well as prior FTA approval of the force account plan.

Note that a force account plan is prepared at the project level; it, therefore, may cover multiple Grants, Cooperative Agreement or Amendments thereto. It may be prepared prior to or subsequent to award, but must be in place before incurring costs.

(1) Justification of Force Account work. A justification to undertake force account work is required to use the recipient's own labor force greater than $1,000,000 on a project. One of four conditions may warrant the use of force account work. These are: (1) cost

savings, (2) exclusive expertise, (3) safety and efficiency of operations, or (4) union agreement. The justification must address at least one of the four criteria.

(a) Cost savings.

The justification documentation must include the following information to be justified based on cost savings:

1 A comparison of the present worth of the estimated cash drawdown for both the force account and private sector contract options.

2 The recipient should use the current interest rate paid on one-year Treasury Bills as the discount rate.

3 The recipient should include the cost of preparing documents, cost of administration, and inspection, cost of labor, materials and specialized equipment, cost of overhead, and profit for private contract.

4 Unit prices for labor; materials and equipment; overhead; and profit, if applicable for private contract.

5 Certification that costs presented are fair and reasonable.

6 The present value calculation based on the midpoint of construction, and if the time for completion of the work differs for force account and a private sector contract, include an estimate of the cost of not using the completed improvement in the present worth calculation. For example, if the work is to replace leased facilities, the cost of continuing the lease until the work is complete should be taken into account in the cost estimate for each option considered.

(b) Exclusive expertise.

The justification documentation must be based on exclusive expertise, and must include documentation equivalent to a sole source justification stating the basis for a determination that no private-sector contractor has the expertise to perform the work.

(c) Safety and efficiency of operations.

The justification documentation must include the following information to be justified based on safety and efficiency of operations:

1 Safety considerations, which may be addressed by a statement of the transit operator's safety officer that performing the work with private-sector contractors would have an adverse effect on employee or public safety,

2 Efficiency concerns, which may be addressed by a present worth calculation, including an estimate of the value of lost transit operation efficiency, and

3 In emergency situations where the recipient uses its own workforce, the recipient may submit a waiver to the Emergency Relief docket.

(d) Union Agreement.

The justification documentation must include the information justified on the basis of a union agreement and must include relevant citations from labor union agreements and an analysis of how the agreements pertain to the work in question.

(2) Force Account Plans. Prior to incurring costs, a recipient must develop force account plans if it intends to use its own labor force in amounts greater than $1,000,000 on a project and retain the plan in its files. If the amount is $10,000,000 or greater, the force account plan must be submitted to FTA for approval, including the following information and must be approved by FTA prior to incurring costs:

(a) A description of the Scope of Work,

(b) A copy of the construction plans and specifications which includes a detailed estimate of costs and a detailed schedule and budget, and

(c) A copy of the proposed Agreement when another public agency is involved.

Special care must be taken to ensure that requirements of 2 CFR part 200 are followed, especially for charging expendable property to force account projects and making sure that allowable costs are assigned to the correct activity codes.

Most general purpose equipment and tools can be used in force account work and thereby benefit more than one project. Therefore, the cost of these items normally should not be treated as a direct charge to the project. However, an appropriate use or depreciation charge is an allowable indirect cost if otherwise provided for in the Award Budget. Unusual circumstances may call for the purchase of specialized equipment that is unique to the force account work that is being performed. If such equipment is required, prior FTA approval must be obtained. The usual FTA equipment disposition requirements apply.

The progress and status of force account activities should be separately discussed in milestone/project reports, with emphasis on schedule and budget.

e. Seismic Standards and Reporting. New federally assisted buildings, and additions to existing buildings and bridges, built with federal assistance must be designed and constructed in accordance with state, local, and industry required standards or codes. Before accepting delivery, the applicant is responsible for determining that the building complies with the seismic design and construction requirements and the recipient certifies to the same through the annual Certifications and Assurances, as required by 49 CFR part 41.

f. Value Engineering. Value Engineering (VE) is the systematic, multi-disciplined approach designed to optimize the value of each dollar spent. To accomplish this goal, a team of architects/engineers identifies, analyzes, and establishes a value for a function of an item or system. The objective of VE is to satisfy the required function at the lowest total costs (capital, operating, and maintenance) over the life of a project consistent with the requirements of performance, reliability, maintainability, safety, and aesthetics.

(1) Applicability.

(a) Major Capital Projects. VE must be used on major capital projects. A major capital project is usually identified during the application process. (*See* Chapter IV, Subsection 5.b, "Project Management Plan," for a definition of major capital project.)

(b) Non-Major Capital Projects. Recipients are encouraged to conduct VE on all construction projects, including but not limited to bus maintenance and storage facilities, intermodal facilities, transfer facilities, railcar acquisition and rehabilitation, and offices, with the level of VE study to be commensurate with the size of the project.

(2) Timing. VE on a project should be performed early in the design process before major decisions have been completely incorporated into the design, at or near the end of Project Development. Additional value engineering may be performed early in the Engineering phase. A VE study may not be needed for some project delivery methods such as design-build, if the bidders are required to provide the VE options (alternate concepts) as part of their proposals. Some large or complex projects may need to conduct two VE studies.

(3) Reporting of Award Budget and Schedule. Recipients with major capital projects are required to submit a VE report to the appropriate FTA Regional Office within a month of completing the report.

(a) Applicability: Recipients of major capital projects must submit project budget and project schedule data to the FTA. A major capital project is usually identified during the application process. (*See* Chapter IV, Subsection 5.b, "Project Management Plan," for a definition of major capital project.)

(b) Timing: Recipients with major capital projects are required to submit project budget and project schedule data at least once per quarter to the appropriate FTA Regional Office. On limited basis, FTA may require a recipient to submit reports more frequently than quarterly.

(c) Value Engineering Reports: Upon completion of a VE study on any major capital project, a recipient is required to submit the VE report to the appropriate FTA Regional Office. Copies of the VE report form are available in each Regional Office.

g. Constructability and Design Peer Reviews. Peer review is a process used by the recipient in the planning, design, and implementation of capital projects. The concept of peer review can be applied to any problem or situation where a second opinion can be useful to decision makers. FTA encourages the recipient to confer with other transit operations and maintenance experts in order to benefit from their experience. These reviews have been used to review rail extensions, New Starts projects, and transit facilities. These reviews have provided an in-depth critique of designs at the preliminary and final engineering stages. They have provided operations and maintenance information with respect to a variety of subsystems and have validated the process used by a recipient's planning staff to locate bus facilities.

The purpose of constructability and design peer reviews is to improve the performance of the process or product being reviewed and optimize the design and subsequent construction of the project. The review should be able to answer such questions as: Can this be constructed? Is there a better process that could be employed to achieve the desired results? Is the product safe? Although the recipient is encouraged to conduct peer reviews with all capital projects, in some instances it may be required by FTA, and the process should be fully documented through the recipient's document control process.

h. Crime Prevention and Security Review. Recipients are encouraged to develop, refine, and conduct training on security and emergency response plans. Emergency response drills should be conducted with public transportation agencies and be fully coordinated with local first response agencies. Other security training should be provided for public transportation employees that will serve to prepare an agency better during an emergency including such things as bomb threats, detection of chemical and biological agents, and other disruptive incidents. Recipients are encouraged to perform crime prevention reviews during the design phase of all federally assisted transit facilities with particular focus on the incorporation and use of crime prevention through environmental design techniques.

This review should serve to improve and increase the safety and security of an existing or planned transit system or facility for both transit patrons and transit employees. The level of review should be commensurate with the project size and scope. Local crime prevention professionals should be included in the review process. Review documentation should remain on file by the recipient and be available for FTA review upon request. Safety and security publications and training information can be found at **http://transit-safety.volpe.dot.gov/Publications** and at **http://transit-safety.volpe.dot.gov/Training**.

i. Concurrent Non-Project Activities. Concurrent non-project activities, also known as betterments, are improvements to the transit project within an Award sought by the recipient that are not part of the base functioning of the federal transit Award. They are not integral to the base functioning of the Award and are viewed as enhancements or upgrades to a level beyond what is normally required for the base functioning of the transit Award .

The concurrent non-project activities are performed in conjunction with federally assisted work under the Award to afford the opportunity to have the non-project work performed economically and efficiently in conjunction with federally assisted project work. Examples of betterments include increased utility pipe sizes, road widening projects for local reasons, environmental mitigation measures not identified in an environmental document, increased landscaping, signal upgrades beyond the base requirements of the transit project, *etc.* Costs for concurrent non-project activities are to be paid for by the recipient.

These costs must be accounted for separately and reported to the FTA separately from the reporting requirements of the Award. Related but different than concurrent non-project activities are activities involving an overbuild situation. Guidance should be obtained from the FTA Regional Office related to any overbuild situation to determine the federal eligibility of such an activity. An example of an over-build situation is over-designing the foundation and base stories of a multi-story facility in order to accommodate better future vertical expansion of the project. Outside a joint development project, such an over-build is generally not an allowable cost.

j. FTA Technical and Construction Oversight Review. The recipient agrees to permit FTA to review, as FTA deems necessary, the technical plans and specifications of a project to ensure proper execution, consistency with the scope and need, and incorporation of FTA requirements. The recipient agrees to comply with any FTA request, including recommendations and determinations pertaining to its review of construction plans and specifications. The FTA Regional Office should be consulted to determine if FTA review of construction plans and specifications is necessary to advance the project to the next level of design. The recipient agrees to provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms to the plans and specifications and that the intent of the scope of the Award is carried out. To the extent applicable, the recipient agrees to comply with FTA PMO regulations, 49 CFR part 633.

k. Energy Conservation. The recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable state energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 *et seq.* The recipient, to the extent applicable, agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C. FTA assistance for the construction, reconstruction, or modification of buildings for which applications are submitted to FTA will be approved only after the completion of an energy assessment. An energy assessment shall consist of an analysis of the total energy requirements of a building, within the scope of the proposed construction activity and at a level commensurate with the project size and scope. The Energy Assessment should consider overall design of the facility or modification, materials and techniques used in construction or rehabilitation, special innovative conservation features that may be used, fuel requirements for heating, cooling, and operations essential to the function of the structure, projected over the life of the facility and including projected costs of this fuel, and energy to be used.

l. Intelligent Transportation System (ITS). Recipients that have transportation projects that include ITS must be participants in a regional or statewide ITS Architecture process and their ITS projects must be included in the locally approved Regional ITS Architecture. Recipients are required to use a Systems Engineering process for the development of ITS projects.

The project level requirements include undergoing a Systems Engineering Analysis for the ITS and communications components of the project or Award, and developing ITS Project Architectures for all Major ITS Projects (prior to the adoption of the regional ITS architecture). The ITS components and FTA National ITS Architecture Consistency Policy for Transit Projects conformity status also should be included in applications for federal assistance within FTA's electronic award and management system. The policy can be found at: http://www.fta.dot.gov/documents/FTA_ITS_Policy.pdf.

A systems engineering analysis is a "structured process for arriving at a final design of a system," and is a method for identifying needs and developing/procuring the best possible configuration for a particular situation. The Policy requires that the systems engineering analysis includes how the project fits into the regional (or National) ITS architecture, how the system will be implemented and operated (roles, requirements), and analyses of alternatives for system configuration, financing, and procurement. Applicable (DOT-developed and supported) ITS standards also must be identified.

Prior to the adoption of a regional ITS architecture, all Awards with major ITS projects must also include the development of a project level architecture. Major ITS projects are any projects that implement part of a regional ITS initiative that is multi-jurisdictional, multi-modal, or otherwise affects regional integration of ITS systems. Examples include regional traveler information, regional electronic payment, new AVL systems that may set the standard for the region, or transit signal priority systems. A project architecture is similar to a regional ITS architecture but focuses on the project and its implementation. Again, all agreements that are needed to implement and operate the ITS systems must be included as part of the project architecture.

m. $1 Coin Requirements. The recipient agrees that 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 that the recipient will display signs and notices of the $1 coin capability.

n. Americans with Disabilities Act (ADA). New facilities and additions and/or alterations to existing facilities are required to comply with regulations issued by DOT implementing the transportation provisions of ADA. 49 CFR parts 27, 37, 38, and 39. Recipients are advised to consult appropriate FTA circulars, DOT guidance, and other official federal guidance. Any new construction or alteration to a facility built after the enactment of the ADA must comply with all ADA requirements. Alterations to pre-ADA facilities are required to include improvements to facility accessibility, to varying extents. Recipients should consult with the applicable Regional Office and Office of Civil Rights to determine the requirements for accessibility improvements for alterations to pre-ADA

facilities. Compliance is a condition of eligibility for federal assistance required by 49 CFR part 27, and is required whether or not the facility or alteration is federally assisted. Depending upon the nature of the facility, compliance with implementing regulations issued by other federal agencies with ADA responsibilities may also be required. The applicant is responsible for ensuring that new facilities and additions/alterations to existing facilities are designed in accordance with DOT and ADA regulations and related guidance in effect as of the date construction begins and for verifying compliance prior to accepting delivery.

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CHAPTER V

FTA OVERSIGHT

1. GENERAL. The Federal Transit Administration (FTA) evaluates recipient adherence to program and administrative requirements through a comprehensive oversight program. FTA's Master Agreement, which is made available to each recipient through FTA's website (http://www.fta.dot.gov/), specifies these requirements. FTA determines compliance through self-certification, oversight review, audits, and site visits.

2. PROGRAM OVERSIGHT

   a. Comprehensive Reviews. FTA's comprehensive oversight reviews take a broad look at its recipients' management practices as well as compliance with program and administrative requirements across a broad spectrum of topic areas in accordance with 49 U.S.C. Chapter 53. In addition to helping evaluate grantees, these reviews give FTA an opportunity to provide technical assistance for meeting FTA requirements and aid FTA in reporting to the Secretary, Congress, other oversight agencies, and the transit community on FTA programs.

   Federal law requires the FTA to review recipients of Section 5307 funds at least every three years. Known as the Triennial Review, these comprehensive reviews allow FTA to meet its statutory obligation to review and evaluate recipients by looking at compliance across a variety of topic areas including financial management and capacity, technical capacity, maintenance, procurement, civil rights, and others. For recipients of federal funds through programs other than 5307, including 5309, 5310, 5311, 5329, 5339, and other sections of 49 U.S.C. chapter 53, the FTA conducts comprehensive oversight reviews following a similar format to the Triennial Review.

   b. Specialized Reviews. In addition to comprehensive oversight reviews, FTA conducts specialized oversight reviews when the recipient is, or is at-risk of being, out of compliance in a specific area. Specialized reviews can occur within the context of a comprehensive review or as a separate review. Major topic areas for specialized reviews include, but are not limited to, procurement, financial management, and civil rights.

      (1) Procurement. Procurement focused reviews ensure that recipients are meeting the third party procurement requirements and standards of the Uniform Administrative Requirements, 2 CFR part 1201 (which incorporates 2 CFR part 200 by reference). Additional information on procurement requirements and standards can be found in FTA Circular 4220.1, "Third Party Contracting Guidance."

(2) Financial Management. Financial management reviews allow FTA to review recipients' financial management and control systems as well as policies and procedures. FTA conducts several types of financial management reviews including: (a) Full Scope System Reviews to determine whether the recipient has proper financial controls and checks and balances in place to manage and track federal funds and meet the requirements of the DOT's Common Rule, 2 CFR part 1201 (which incorporates 2 CFR part 200 by reference), (b) Cost Allocation Plan/Indirect Cost Rate Plan Reviews to determine whether the methodology for allocating indirect costs to the Grant or Cooperative Agreement is calculated in a manner consistent with the Common Rule, and (c) Financial Condition and Capability Assessments to assess a recipient's financial condition and capability to maintain and operate the existing system.

(3) Civil Rights. Recipients and subrecipients of federal assistance must comply with Federal Civil Rights requirements under Title VI of the Civil Rights Act, DOT regulations concerning participation by Disadvantaged Business Enterprises (DBE), Equal Employment Opportunity (EEO) requirements, and the transportation provisions of the Americans with Disabilities Act of 1990 (ADA). The FTA Office of Civil Rights conducts periodic reviews to ensure ongoing compliance with these requirements so that recipients and subrecipients may remain eligible for Federal financial assistance. FTA recipients should be aware, however, that they may be subject to civil rights requirements established and enforced by Federal agencies other than FTA or DOT, and that some of these responsibilities exist independent of FTA or other Federal funding.

(a) Title VI Reviews. Title VI prohibits discrimination by recipients of federal assistance on the basis of race, color, and national origin, including the denial of meaningful access for limited English proficient (LEP) persons. The FTA Office of Civil Rights reviews recipients of FTA assistance to determine their compliance with Title VI, the DOT implementing regulations at 49 CFR part 21, and the Title VI program-specific guidance in the latest edition of FTA Circular 4702.1. This includes a review of the recipient's service standards and policies, public outreach efforts, process for conducting service and fare equity analyses, LEP compliance, and other efforts.

(b) DBE Reviews. Under 49 CFR § 26.21(a)(2), each FTA recipient must have a DBE program if it receives planning, capital, and/or operating assistance, and will award prime contracts with a cumulative total value exceeding $250,000 in FTA funds in a federal fiscal year (excluding transit vehicle purchases). The regulations also require that recipients establish a triennial DBE goal to reflect anticipated DBE participation throughout the fiscal year. In addition, under 49 CFR § 26.49, recipients

are required to ensure that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on a FTA-assisted transit vehicle procurement, certifies that it has submitted a DBE goal to FTA. The list of DBE-certified TVMs can be found on FTA's website at www.fta.dot.gov/dbe.

(c) EEO Reviews. FTA recipients are required to have EEO programs in place to prevent discrimination against their employees or applicants for employment because of race, color, religion, national origin, sex, disability or age. The FTA Office of Civil Rights reviews recipients of FTA assistance to determine their compliance with related federal transit laws (for example, 49 U.S.C. § 5332(b)) and FTA's EEO Circular 4704.1. This includes assessing a recipient's employment practices and policies, designation of EEO responsibilities, employment statistics and workforce analyses, and monitoring of EEO efforts.

(d) ADA Reviews. The ADA prohibits discrimination on the basis of disability. FTA is responsible for ensuring that providers of public transportation are in compliance with the DOT regulations implementing the transportation provisions of the ADA, 49 CFR parts 27, 37, 38, and 39, which govern the design, construction, alteration and maintenance of transportation facilities; the design, acquisition, and maintenance of vehicles; and the operation of transportation services. These requirements are further addressed in FTA Circular 4710.1. The FTA Office of Civil Rights conducts periodic compliance reviews of FTA recipients with regard to the following:

1 Rail stations (key stations, new construction, and alterations to existing stations);
2 Fixed-route service (stop announcements and lift and ramp maintenance); and
3 Complementary paratransit (eligibility and service requirements).

3. SAFETY OVERSIGHT

FTA is required under 49 U.S.C. § 5329 to establish a comprehensive public transportation safety program.

Pursuant to 49 U.S.C. § 5329(f), the U.S. Secretary of Transportation is authorized to take actions to evaluate and direct changes in a recipient's performance of operations in order to improve the safety of public transportation systems. The extent of these authorities and actions includes: (1) conducting inspections, investigations, audits, examinations, and testing of the equipment, facilities, rolling stock, and operations of the recipient's public transportation system, (2) making reports and issuing directives with respect to the safety of the recipient's public transportation system, and (3) issuing a subpoena to and taking the deposition of any employee of a recipient or State Safety Oversight Agency in conjunction with an

accident investigation or an investigation into a pattern or practice of conduct that negatively affects public safety.

Pursuant to 49 U.S.C. § 5329(g), the Secretary is authorized to issue directives, to require more frequent oversight of a recipient by a State Safety Oversight Agency or the Secretary, to impose more frequent reporting requirements, and to require that any federal financial assistance provided under 49 U.S.C. chapter 53 be spent on correcting safety deficiencies identified by the Secretary or the State Safety Oversight Agency.

The specific safety reviews are discussed below:

a. Drug and Alcohol Program Compliance Audits. The purpose of the Drug and Alcohol Testing Program is to help prevent accidents, fatalities, and injuries resulting from the misuse of alcohol or the use of prohibited drugs by employees who perform safety-sensitive functions. Establishing a testing program is a condition of federal assistance appropriated or made available for 49 U.S.C. §§ 5307, 5309, 5311, 5339, or other program as designated by the Secretary and any contractor of a recipient or subrecipient under 49 U.S.C. §§ 5307, 5309, 5311, 5339, or other program as designated by the Secretary. For noncompliance with 49 CFR parts 40 and 655, the Secretary may bar a recipient from receiving FTA assistance in an amount that the Secretary deems appropriate.

   Recipients must certify annually that they are in compliance with DOT and FTA regulations concerning drug and alcohol testing, 49 CFR parts 40 and 655 respectively.

   FTA conducts audits of recipients and states to assess their implementation of 49 CFR part 655 requirements. These audits provide in-depth reviews of recipient and state programs, and include a detailed examination of records and interviews with appropriate recipient personnel, their contractors, service agents such as employees of collection sites, medical review officers, substance abuse professionals, and third party administrators. FTA assigns staff and contractor support to audit recipients' drug and alcohol testing programs. FTA uses data collected and analyzed from the Drug and Alcohol Management Information System (DAMIS) to assess and monitor recipients' programs. FTA monitors industry drug and alcohol testing rates and results. These audits are scheduled based on analysis of DAMIS information and annual recipient evaluation. FTA manages this program using a Web-based auditing and reporting system.

b. State Safety Oversight Program Audit. FTA is required to monitor and evaluate compliance with FTA's State Safety Oversight Rule, 49 CFR part 659. FTA conducts triennial audits of each state oversight agency designated to implement FTA's State Safety Oversight Rule for the rail transit agencies

operating in its jurisdiction. For each audit, FTA assigns its own staff, plus contractor support, to review each state's program. These audits are scheduled based on analyses of annual reporting information provided by the states and use the recipient assessment. These audits provide in-depth reviews of each state's program, and include a detailed examination of records and interviews with appropriate personnel and their contractors, at both the state oversight agency and the regulated rail transit agencies. The audits also provide a forum to recommend improvements to the effectiveness of the oversight program established by each state.

c. FTA Voluntary Bus Transit Safety and Security Reviews. To implement the terms of the Memorandum of Agreement signed by FTA, the American Association of State Highway and Transportation Officials, the American Public Transportation Association, and the Community Transportation Association of America, FTA conducts voluntary safety and security reviews at bus agencies throughout the country. These reviews assess each bus agency's safety and security activities against FTA's technical assistance baseline, and provide recommendations, effective practices, and model materials to support improvements in critical safety and security functions. The Transit Bus Safety and Security Program is based on objectives designed to improve safety and security for passengers, employees, and others that share the roadways with America's urban and rural public transit bus operations. The Program encompasses public transit bus agencies of all sizes, including urban, small urban, rural, tribal and community transit, and FTA is committed to the broadest possible implementation of Program strategies and tools.

4. PROJECT OVERSIGHT

Capital Program Management Reviews

(1) Cost, Scope, Schedule, Project Management Plan and Technical Capacity, and Capability Reviews and Risk Assessments. Some of the key activities that FTA performs include cost review, scope review, schedule review, project management plan review, and review of the management capacity and capability of the project sponsor. Several other reviews may be conducted based on the project requirements. The reviews are generally based on the complexity of the project, the project sponsor's experience, and the cost of the project.

(2) Project Management Oversight (PMO) Reviews. FTA conducts PMO reviews for major capital projects. The primary goal of FTA's PMO reviews is to ensure that the project sponsors have all the necessary processes and procedures in place to effectively manage and deliver the promised benefits of the project on time, within budget, and in compliance with all applicable federal requirements and the project management plan. PMOC Contractors will, generally, undertake a quarterly project site visit unless concerns with

implementing the project management plan results in budget or schedule risk arise.

(3) Project Management Meetings.

(1) Quarterly Project Management Meetings. Quarterly project management meetings, between FTA staff and project sponsors, may be instituted with selected recipients. These meetings provide a forum for management briefings, status/progress reports, discussion of accomplishments and problems, and, as appropriate, an opportunity for site inspection.

(2) Site Visits. FTA may conduct on-site inspections of projects to evaluate the recipient's effectiveness in implementing the project in conformance with the Grant Agreement, Cooperative Agreement, or Other Agreement. Inspection visits may be made, for example, to follow up on information received from the recipient about an event with significant impact on a project or to determine whether the recipient has adequately complied with civil rights laws, regulations, and agreements. Inspection and concurrence by FTA in project work does not relieve the recipient of its responsibilities and liabilities as the responsible party for carrying out the project. The meetings do not replace quarterly written reports, unless FTA grants a specific exemption.

NOTE: As a result of its monitoring efforts or those of its designated agents, FTA may determine that a recipient requires additional or specialized oversight to address identified or potential programmatic, administrative or financial concerns. Supplemental oversight may also include the imposition of additional conditions on the award or monitoring requirements.

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CHAPTER VI

FINANCIAL MANAGEMENT

1. GENERAL. This chapter discusses the proper use and management of federal assistance the Federal Transit Administration (FTA) expects its recipients to adopt and use. Financial management is one of the most important practices in the management of federal assistance.

2. INTERNAL CONTROLS.

   a. Internal control means a process, implemented by a recipient or subrecipient, designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (1) effectiveness and efficiency of operations, (2) reliability of reporting for internal and external use, and (3) compliance with applicable laws and regulations.

   b. Internal Control Over Compliance Requirements for the Federal Award means a process implemented by a non-federal entity designed to provide reasonable assurance regarding the achievement of the following objectives for federal awards:

      (1) Transactions are conducted in compliance with:

         (a) Federal statutes, regulations, and the terms and conditions of the federal award that could have a direct and material effect on a federal program, and

         (b) Any other federal statutes and regulations that are identified in the OMB Compliance Supplement.

      (2) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

      (3) Transactions are properly recorded and accounted for in order to:

         (a) Permit the preparation of reliable financial statements and federal reports,

         (b) Maintain accountability over assets, and

         (c) Demonstrate compliance with federal statutes, regulations, and the terms and conditions of the federal award.

   c. General. FTA payments to a recipient are made electronically to meet the federal share of eligible expenses incurred under the Award.

      The recipient's execution of its FTA Grant or Cooperative Agreement requires the recipient to use the federal assistance it receives as specified in that Grant or Cooperative Agreement. This creates a vested interest by the Federal Government in unused balances, any improperly used federal assistance, and facilities, equipment, or services purchased

or otherwise acquired to implement its Award, whether the federal assistance received by the recipient is an advance or reimbursement.

Recipients and subrecipients are responsible for establishing and maintaining adequate internal controls over all their functions that affect implementation of the Award.

For proper management of the Award, these controls must be used by each recipient in all its operating, accounting, financial, and administrative systems. To ensure proper accountability for federal assistance, internal controls must be integrated with the management systems used by the recipient to regulate and guide its operations.

d. Objectives. Resources must be used in accordance with applicable state, local, and federal laws, regulations and policies, and the Grant or Cooperative Agreement accompanying the Award. Resources must be safeguarded against waste, loss, and misuse. Reliable data on resource use and safeguards must be accumulated, maintained, and fairly disclosed in reports to the recipient's management and FTA. A proper system of internal controls will help the recipient to:

(1) Operate efficiently and economically,

(2) Keep obligations and costs within the limits of authorizations and legal requirements, consistent with accomplishing the purpose of the Award,

(3) Safeguard assets against waste, loss, and misuse,

(4) Ensure timely collection and proper accounting of the recipient's operating and other revenues, and

(5) Ensure accuracy and reliability in financial, statistical, and other reports.

e. Necessary Elements. Certain elements are necessary to achieve the objectives mentioned above in Chapter VI, subsection 2.d and meet the standards discussed below in Chapter VI, subsection 2.f. The following objectives and standards facilitate the recipient's use of internal controls:

(1) Reasonable assurance that internal controls are an integral part of the recipient's management systems,

(2) Existence of a positive and supportive attitude among the recipient's managers and employees,

(3) Assignment of internal control functions to competent and experienced employees,

(4) Identification of specific internal control objectives to ensure that needs are identified and that valid controls are planned and implemented,

(5) Adoption of internal control policies, plans, and procedures that reasonably ensure their effectiveness, such as organizational separation of duties and physical arrangements, such as locks and fire alarms, and

(6) Regular program of testing to identify vulnerabilities in the internal control system.

f. Standards of Internal Control and Audit Resolutions.

(1) General.

(a) Recipient management policies that govern implementation of the Award must be clearly stated, understood throughout the organization, and conformed to applicable legislative and administrative requirements.

(b) The recipient's formal organization structure must clearly define, assign, and delegate appropriate authority for all duties.

(c) Responsibility for duties and functions must be segregated within the organization to ensure that adequate internal checks and balances exist. Recipients should pay particular attention to authorization, performance, recording, inventory control, and review functions to reduce the opportunity for unauthorized or fraudulent acts.

(d) A system of organizational planning should exist to determine financial, property, and personnel resource needs.

(e) Written operating procedures must exist and be simply stated, yet meet the recipient's operating, legal, and regulatory requirements. In developing its procedures, the recipient should consider such factors as feasibility, cost, risk of loss or error, and availability of suitable personnel; other important considerations are the prevention of illegal or unauthorized transactions or acts.

(f) The recipient's information system must reliably provide needed operating and financial data for decision-making and performance review.

(g) The recipient must provide proper supervision and performance must be subject to review of an effective internal audit program.

(h) All personnel must be properly qualified for their assigned responsibilities, duties, and functions; education, training, experience, competence, and integrity should be considered in assigning work; all must be held fully accountable for the proper discharge of their assignments.

(i) Expenditures must be controlled so that construction, equipment, other property, and services are acquired and received as contracted for (as to quality, quantity,

price, and time of delivery); authorizations for expenditures must conform to applicable statutes, regulations, and policies.

(j) All real property, equipment, expendables, and funds must be safeguarded to prevent misuse, misappropriation, waste, or unwarranted deterioration or destruction.

(2) Internal Control Self-Assessment. The recipient should evaluate its internal controls and financial management systems to ensure their effectiveness. To assist with the evaluation, FTA developed an example of an Internal Control Self-Assessment Form. The optional form is designed to provide the recipient's management staff with the information necessary to evaluate the agency's internal control and financial management system. The form is based on the criteria for effective internal control as set forth in Internal Control—Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Committee (the COSO Report), as well as the criteria for effective financial management systems established by FTA, based on U.S. DOT's common rules at 2 CFR § 200.518, effective on and after December 26, 2014 and former 49 CFR parts 18 and 19 in effect before December 26, 2014. Recipients may access the Internal Control Self-Assessment Form at the following website: http://www.fta.dot.gov/documents/FTA_Internal_Control_Self-Assessment_Tool.pdf.

(3) Financial Management Systems.

(a) States: A state must expend and account for the federal assistance it awarded in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the financial management systems of a state, recipient, or subrecipient, including records documenting compliance with federal statutes, regulations, and the terms and conditions applicable to the Award, must be sufficient to:

1 Permit preparation of reports required by the general and program-specific terms and conditions, and

2 Permit the tracing of federal assistance to a level of expenditures adequate to establish that such federal assistance has been used according to the federal statutes, regulations, and the terms and conditions of the Award.

(b) Entities Other than a State: The financial management systems of each recipient or subrecipient other than a state must meet the following standards:

1 Financial Reporting. Accurate, current, and complete disclosure of the financial results of federally assisted activities must be made in accordance with financial reporting requirements.

2 Accounting Records. Recipients and subrecipients must maintain records that adequately identify the source and application of funds provided for federally assisted activities. These records must contain information pertaining to the Award or subawards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

3 Internal Control. Effective control and accountability must be maintained for all cash provided to support the Award or subaward, real and personal property, and other assets; recipients and subrecipients must adequately safeguard all such property and must ensure that it is used solely for authorized purposes.

4 Budget Control. Actual expenditures or outlays must be compared with budgeted amounts for each Award or subaward. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the Grant or Cooperative Agreement or written agreement with the subrecipient. If the unit cost data are required, estimates based on available documentation will be accepted whenever possible.

5 Allowable Cost. Applicable Office of Management and Budget (OMB) cost principles of 2 CFR part 200 for Awards made on or after December 26, 2014, and OMB cost principles for Awards made before December 26, 2014 as stated in former 2 CFR parts 220, 225, and 230, as applicable. U.S. DOT program regulations, and the terms of the Grant or Cooperative Agreement or other written agreement with the subrecipient must be followed in allowability and allocability of costs.

6 Source Documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contracts, and subrecipient documents.

7 Cash Management. Procedures for minimizing the time elapsing between the transfer of funds from the Treasury and disbursement by recipients and subrecipients must be followed whenever advance payment procedures are used. Recipients must establish reasonable procedures to ensure the reports on subrecipients' cash balances and cash disbursements are received in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by electronic transfer of funds methods, the recipient must make drawdowns as close as possible to the time of making disbursements. Recipients must monitor cash drawdowns by their recipients to ensure that they conform substantially to the same standards of timing and amount that apply to advances to recipients. Payment received from FTA must be disbursed within

three business days. If not disbursed within three days, funds become excess funds and must be returned to FTA with interest.

3. NON-FEDERAL SHARE. The recipient agrees to provide sufficient funds or approved in-kind resources to serve as non-federal share for all of its federally assisted Awards in compliance with 49 U.S.C. chapter 53. The recipient certifies that it has or will have available the proportionate amount of the non-federal share to pay promptly the costs incurred or that become due to implement the Award, except to the extent that the Federal Government determines in writing that the non-federal share may be deferred. The recipient may not use an amount as the non-federal share for more than one Award.

   Depending on the source of FTA funding, the non-federal share may include:

   a. Cash from nongovernmental sources other than revenues from providing public transportation services,

   b. Non-farebox revenues from the operation of public transportation service, such as the sale of advertising and concession revenues; a voluntary or mandatory fee that a college, university, or similar institution imposes on all its students for free or discounted transit service is not farebox revenue,

   c. Assets from other federal sources if authorized by federal law to be used as non-federal share for the specific project,

   d. Amounts received under a service agreement with a state or local social service agency or private social service organization, and

   e. Undistributed cash surpluses, replacement or depreciation cash funds, reserves available in cash, or new capital.

   Note: Recipients should consult the applicable program circular to determine what sources of non-federal share are permitted for any particular activity.

4. FINANCIAL PLAN. Upon request from FTA, the recipient agrees to provide a financial plan delineating the source of non-federal share, the amounts applicable to the different sources, and the time frame for acquisition of the non-federal share. Recipients must have multi-year financial plans (3–5 years) for operating and capital revenues and expenses to implement FTA awards. The financial plans should indicate adequate revenues to maintain and operate the existing system and to complete the annual program of projects (POP).

5. FEDERAL PRINCIPLES FOR DETERMINING ALLOWABLE COSTS.

   a. General.

      (1) Recipients should refer to DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR. part 1201, for

Awards and Amendments thereto with additional funding made on or after December 26, 2014, to awards and amendments.

(2) Recipients of Awards made before December 26, 2014, should refer to former 2 CFR part 220 (OMB Circular A-21, "Cost Principles for Educational Institutions"); former 2 CFR part 225 (OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments"); former 2 CFR part 230 (OMB Circular A-122, "Cost Principles for Non-Profit Organizations"); or the Federal Acquisition Regulations subpart 31.2 (48 CFR chapter I, subpart 31.2), which covers for-profit organizations. While there are a few substantive differences between the new cost principles of 2 CFR part 200 and the former OMB cost principles, the differences are explained in the following OMB "crosswalk" documents:

(a) "Uniform Guidance Crosswalk from Final Guidance to Existing Guidance A-21, A-50, A-87, A-89, A-102, A-110, A-122, A-133, https://www.whitehouse.gov/sites/default/files/omb/fedreg/2013/uniform-guidance-crosswalk-from-predominate-source-in-existing-guidance.pdf, and

(b) "Uniform Guidance Crosswalk from Existing Guidance to Final Guidance," https://www.whitehouse.gov/sites/default/files/omb/fedreg/2013/uniform-guidance-crosswalk-from-predominate-source-in-existing-guidance.pdf.

(3) Apart from the cost differences identified above, FTA has determined that:

(a) The Program Income provisions of 2 CFR § 1201.80 supersede conflicting provisions of the Program Income provisions of 2 CFR § 200.80. In addition, the profit provisions of the latest Master Agreement supersede the prohibition on profits of 2 CFR. § 200.400(g).

(b) Project costs must specifically relate to the purpose of the Award and the latest Award Budget. Recipients may incur direct and indirect costs. Direct costs are costs that can be identified specifically with a particular cost objective and may be charged directly to the Grant or Cooperative Agreement. All direct costs, even for project administration activities, must be adequately supported with proper documentation. For example, all labor charges must be supported with T&A records. Indirect costs are costs incurred for a common or joint purpose benefiting more than one cost objective. Indirect costs must be supported by an approved Cost Allocation Plan (CAP) and/or Indirect Cost Rate Proposal (IRCP).

(c) Care must be exercised when incurring costs to ensure that all expenditures meet the criteria of eligible costs. Failure to exercise proper discretion may result in expenditures for which the use of project funds cannot be authorized. The guidelines contained in this document are general guidelines for determining allowable costs, and any program-specific guidelines take precedence over what is presented here. Please refer to your specific program's guidance and circulars for more information.

b. Allowable Costs. The criteria that govern the eligibility of costs to implement the Award are listed below. To be allowable under a federal assistance program, costs must meet the following general criteria:

(1) Be necessary and reasonable for proper and efficient administration of the federal assistance program, be allowable under the principles contained in the OMB common rules and circulars and except as specifically provided in this circular, not be general expenses required to carry out the overall responsibilities of state or local governments.

(2) Be authorized or not prohibited under state or local laws or regulations.

(3) Be able to conform to any limitation or exclusions set forth in the principles, federal laws, or other governing limitations as to types or amounts of cost items.

(4) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which recipient is a part.

(5) Be treated consistently. A cost may not be assigned to its Award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Award as an indirect cost.

(6) Be determined in accordance with generally accepted accounting principles (GAAP) appropriate to the circumstances.

(7) Not be allocable to or included as a cost of any other federally assisted program in either current or prior periods,

(8) Be net of all applicable credits.

(9) Be adequately documented.

(10) Not be incurred before its Award is made unless specifically provided for in a Letter of No Prejudice (LONP) or equivalent document approved by FTA, or in the pre-award authority as described in the *Federal Register* listing of the Annual Apportionments.

c. Disallowed Costs. In determining the amount of federal assistance FTA will provide, FTA will exclude:

(1) Any costs to implement the Award incurred by the recipient before the date of either the Award or the Award Budget (whichever is earlier), unless specifically provided for in a LONP or equivalent document approved by FTA, or in the pre-award authority as described in the *Federal Register* listing of the Annual Apportionments, and

(2) Any costs attributable to property or services received under a contract or other arrangement that is required to be, but has not been, concurred in or approved in writing by FTA.

The recipient agrees that reimbursement of any cost in accordance with the indicated payment methods for its Award does not constitute a final FTA decision about the allowability of that cost and does not constitute a waiver of any violation by the recipient of the terms of its Award. If the Federal Government determines that the recipient is not entitled to receive any part of the federal assistance requested, the Federal Government will notify the recipient stating the reasons. Closeout of the Award will not alter the recipient's obligation to return any federal assistance due to FTA as a result of later refunds, corrections, or other transactions. Nor will closeout of the Award alter FTA's right to disallow costs and recover federal assistance on the basis of a later audit or other review. Unless prohibited by law, FTA may offset any federal assistance to be made available under its Award necessary to satisfy any outstanding monetary claims that FTA may have against the recipient. Exceptions pertaining to disallowed costs are set forth in FTA directives or in other written federal guidance.

6. INDIRECT COSTS.

a. General. Recipients that intend to seek payment for indirect costs must prepare a Cost Allocation Plan (CAP) or an Indirect Cost Rate Proposal (ICRP). CAPs and Indirect Cost Rate Proposals must be approved by FTA or another cognizant federal agency. Pursuant to 2 CFR § 200.210, a federal award must include an indirect cost rate and identify indirect costs in a separate budget line item in order to be eligible for reimbursement under an Award.

b. Definitions. Indirect costs, as defined in 2 CFR part 200, are costs that are:

(1) Incurred for a common or joint purpose benefiting more than one cost objective,

(2) Not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved, and

(3) Originating in the recipient department as well as those incurred by other departments in supplying goods, services, and facilities to the recipient department.

Examples of indirect costs are administrative, operational, and expenses of unit heads and their immediate staff. Principles and standards for determining costs applicable to Grants and Cooperative Agreements with recipient or other state or local agencies are presented in 2 CFR part 200 and the appropriate Department of Health and Human Services (DHHS) publication, ASMB C-10.

c. Cognizant Federal Agency. Cognizance is generally assigned to the federal agency that provides the predominant amount of federal funding with a recipient within a given state

or locality. (OMB has assigned cognizant audit agencies for state and local governments.)

Cognizant agency for indirect costs means the federal agency responsible for reviewing, negotiating, and approving indirect cost proposals or cost allocation plans developed under 2 CFR part 200 on behalf of all federal agencies. Cognizance is generally assigned to the federal agency that provides the predominant amount of dollar involvement with a recipient organization. Once designated as the cognizant agency for indirect costs, the federal agency must remain so for a period of 5 years. (The cognizant agency for indirect costs is not necessarily the same as the cognizant agency for audit.) The U.S. DOT is the cognizant agency for determining indirect costs for state and local airport and port authorities and transit districts.

In those cases in which a recipient is not assigned a cognizant agency, that recipient will be under the general oversight of the federal agency that provides it the most direct Federal funds, which will also be identified as the cognizant agency for indirect costs.

d. Types of Plans.

(1) The first type of CAP is a plan that distributes the costs of a state or local government's executive and central level support functions to those operating organizations (usually at a lower tier level) within the government that benefit from them. These documents are also referred to as a statewide cost allocation plans (SWCAP) or local-wide cost allocation plans (LWCAP). All SWCAPs must be submitted annually to DHHS for approval. DHHS is the cognizant agency for all states. Unless required by FTA or the cognizant agency, the local governments claiming central services costs do not have to receive federal approval. However, central services costs must be updated annually and kept for audit purposes. The costs approved under these plans may, at the option of the state or local government, be incorporated into the Indirect Cost Rate Proposals of a recipient agency within the government. *See* Appendix G for further information.

(2) The second type of CAP is an Indirect Cost Rate Proposal, which is a financial document that is updated annually at the operating agency level and which distributes the administrative support and/or overhead costs of that agency to the programs (and the Grants and Cooperative Agreements thereunder) that benefit from them. An Indirect Cost Rate Proposal may include the allocable portion of state or local central service costs approved in the SWCAP/LWCAP. *See* Appendix F for further information.

Requirements for development and submission of indirect cost rate proposals and cost allocation plans are contained in Appendices III–VII and Appendix IX of 2 CFR part 200, as follows:

(a) Appendix III to 2 CFR part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

(b) Appendix IV to 2 CFR part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(c) Appendix V to 2 CFR part 200—State/Local Governmentwide Central Service Cost Allocation Plans;

(d) Appendix VI to 2 CFR part 200—Public Assistance Cost Allocation Plans;

(e) Appendix VII to 2 CFR part 200—States and Local Government and Indian Tribe Indirect Cost Proposals; and

(f) Appendix IX to 2 CFR part 200—Hospital Cost Principles.

Refer to Appendix F of this circular regarding additional information on Indirect Cost Rate Proposals and Appendix G for CAP information.

e. Reporting Indirect Expenses. If a recipient is charging indirect costs to its Award, the recipient must include the status of expenditures when completing its reporting requirements (quarterly, monthly, or annual, as applicable). The information listed below must be provided in your reports as expenses incurred on a cumulative basis.

The type of plan and rate must be consistent with the approved cost allocation plan on file, as approved by the cognizant agency, or as otherwise approved by FTA that permits reimbursement of these expenses. The recipient should report expenses that are consistent with the rate indicated at the time of application and reflected in the FFR. The information to be reported is:

(1) Type – Enter indirect expense type (*e.g.*, provisional or fixed),

(2) Rate – The rate approved by the cognizant agency,

(3) Base – The total base amount from which the indirect cost rate is determined,

(4) Period from / Period to – The period covered by the approved rate,

(5) Amount Charged – The total amount of indirect expenses charged to the Award on a cumulative basis, and

(6) Federal Share – The federal share of the indirect expenses charged.

7. PROGRAM INCOME.

a. General. Recipients are encouraged to earn income to defray program costs where appropriate.

FTA's program income policy for state, local governments, and Indian tribes for institutions of higher learning, and for nonprofit organizations are at 2 CFR § 200.307 as modified by 2 CFR § 1201.80. The "Program Income" provisions of 2 CFR § 1201.80 supersede the "Program Income" provisions of 2 CFR § 200.80, and as further described in the latest FTA Master Agreement. FTA recognizes program income to be gross income earned by the recipient that is directly generated by a supported activity, or earned only as a result of the federal award during the period of performance, per 2 CFR § 200.77. Period of performance means the time during which the recipient may incur new obligations to carry out the work authorized under its Award. The federal awarding agency or pass-through entity must include start and end dates of the period of performance in its Award.

b. Program Income includes, but is not limited to, the following income:

(1) Fees for services performed, such as fare box revenues,

(2) The use or rental of real or personal property acquired under its Award,

(3) The sale of commodities or items fabricated under its Award,

(4) License fees and royalties on patents and copyrights,

(5) Advertising/concessions specifically required by the federal Award, and pertaining to specific activities or accomplishments which result from performance of the federal Award, and

(6) Payments of principal and interest on loans made with federal assistance.

Interest earned on advances of federal assistance is **NOT** program income. Except as otherwise provided in federal statues, regulations, or terms and conditions of the federal Award, program income does not include rebates, credits, discounts, and interest earned on any of them.

c. Cost of Generating Program Income. If authorized by federal regulations or the Award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Award.

d. Governmental Revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a recipient or subrecipient are not program income unless the revenues are specifically identified in the Award, documents incorporated by reference into the Award, or federal awarding agency regulations as program income.

e. Property. Proceeds from the sale of real property or equipment are not program income. Such proceeds will be handled in accordance with the requirements of 2 CFR part 200, subpart D, Post Federal Award Requirements, Property Standards, § 200.311 Real

property, and § 200.313 Equipment, or as specifically identified in federal statues, regulations, or the terms and conditions of its Award.

f. Use of program income. One of the following three methods must be followed when receiving program income

(1) Deduction. Ordinarily program income must be deducted from the total allowable costs to determine the net allowable costs. Program income must be used for current costs unless FTA authorizes otherwise. Program income that the recipient did not anticipate at the time of the federal Award must be used to reduce the federal Award and the recipient's contributions rather than to increase the funds committed to the project.

(2) Addition. With prior approval of FTA, program income may be added to the Award. The program income must be used for the purposes and under the conditions of the Award.

(3) Cost sharing or matching. Depending on federal statutory or regulatory restrictions, several types of program income can be used as match without prior approval (*See* below). Otherwise, with prior approval of FTA, program income may be used to meet the cost sharing or matching requirement of the federal Award. The amount of the federal Award remains the same.

Program Income Alternative	**Use of Program Income** (Specified in the terms and conditions or provisions of the Grant or Cooperative Agreement)
Deductive Method	Deducted from the total allowable costs of the project or program to determine the net allowable costs on which the federal share of costs will be based.
Additive Alternative	Added to funds committed to the project or program and used to further eligible project or program objectives
Matching Alternative	Used to satisfy all or part of the required recipient share of the project or program on FUTURE Grants and Cooperative Agreements

FTA's programs have specific requirements for some types of program income.

Farebox revenues, regardless of when they are earned, must follow the deductive method, and cannot be used as local match.

Depending on the FTA capital program (*See* the applicable program circular), revenues from the sale of advertising and concessions can be used as local match and/or can be retained as part of a recipient's undisbursed cash surplus. And for some programs, income from contracts to provide human service transportation may be used as the non-federal share for the Award in which the income is generated.

FTA allows its recipients to retain all other program income as part of its undisbursed cash surplus. Program income may not be used to reduce the non-federal share of the Award from which it was earned, but may be used in as match for future Awards.

Unlike other forms of program income, if recipients choose not to use program income for public transportation purposes, then it will be deducted from total allowable costs to determine the net allowable costs of a Project.

g. Income After the Performance Period of the Award. Except for fare box revenues, there are no federal requirements governing the disposition of program income earned after the end of the period of performance of the Award (*i.e.*, after the ending date of the final Federal Financial Report), unless the federal awarding agency regulations or terms and conditions of the Award provide otherwise. The federal awarding agency may negotiate agreements with recipients regarding appropriate uses of program income earned after the period of performance as part of the closeout process for the Award.

8. ANNUAL AUDIT.

a. General. 2 CFR part 200, subpart F Audit Requirements. The OMB common rule, 2 CFR part 200 and the current OMB Compliance Supplement provide the requirements for annual audits of recipients, also known as the Single Audit. Documentation regarding Single Audit requirements is available on the OMB website at: **https://www.whitehouse.gov/omb/financial_fin_single_audit**.

b. Requirement. In accordance with 2 CFR § 200.501(a) and (b), recipients that expend $750,000 or more in a year in federal assistance from all sources must have a single audit conducted, except when they elect to have a program-specific audit conducted, 2 CFR § 200.501(c). The audit must be completed and the data collection form and reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months of the end of the audit period. If the due date falls on a Saturday, Sunday, or federal holiday, the reporting package is due the next business day.

FTA recipients are required to obtain the services of an independent auditor to conduct a Single Audit each year in conformance with 2 CFR part 200, subpart F, except if a state constitution or statute provides for a single biennial audit or as permitted by 2 CFR § 200.504.

Recipients are required to submit one copy of their annual single audit report to FTA if the audit report contains any findings and recommendations related to the FTA program

or other DOT program findings. In those cases in which the audit report does not contain any FTA findings or recommendations, a copy of only the Federal Clearinghouse transmittal sheet "the Data Collection Form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations, OMB Form SF-SAC" should be submitted to the FTA regional or metropolitan office.

Recipients must keep one copy of the data collection form and one copy of the audit reporting package on file for three years from the date of submission to the federal clearinghouse. Pass-through entities must keep subrecipients' submissions on file for three years from date of receipt.

c. Purpose. The purpose of the single annual audit report is to determine whether the recipient:

(1) Has prepared financial statements that fairly present its financial position and the results of its financial position and the results of its financial operations in accordance with generally accepted accounting principles,

(2) Has in place internal accounting and other control systems to provide reasonable assurance that it is managing its federal assistance programs in compliance with applicable laws and regulations, and

(3) Has complied with laws and regulations that may have material effect on its financial statements and on each of its major federal assistance programs.

The annual Single Audit must be performed by an independent auditor who is required to determine and report on whether the recipient has internal control systems that reasonably assure that the recipient is managing federal assistance programs in compliance with applicable laws and regulations.

Recipients are required to determine whether certain subrecipients as described in 2 CFR § 200.331 spend the federal assistance they receive in accordance with applicable laws and regulations. Audit judgment concerning the recipient's determination is left to the independent auditor.

d. Resolution of Audit Findings. Recipients and subrecipients are responsible for prompt resolution of all audit findings and recommendations. This responsibility requires that the recipient:

(1) Promptly evaluate the report,

(2) Determine the appropriate follow-up actions and establish a date for their completion, and

(3) Complete all required actions within the established period of time.

The recipient must resolve the deficiencies or opportunities for improvement identified in their audit. The resolution of audits begins with FTA's report to the recipient and continues until the recipient corrects identified deficiencies, implements needed improvements, or demonstrates that the findings or recommendations are not valid or do not warrant management action.

The audit cannot be closed until FTA concurs in the documentation of steps taken to implement any needed corrective actions. The status of outstanding audit findings and recommendations should be monitored and reported by the recipient in quarterly progress reports and, where appropriate, significant events reported.

9. PAYMENT PROCEDURES.

a. General. Provisions in 2 CFR § 200.305 and 31 CFR part 205 govern payments to recipients for financing operations under federal assistance and other programs. These regulations require that advance payment to a recipient be limited to the minimum amounts needed and timed to be in accord with only the actual, immediate cash requirements of the recipient in carrying out the purpose of the Award. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the recipient for direct program or costs of the Award and the proportionate share of any allowable indirect costs. The recipient must make timely payment to third party contractors in accordance with the third party contract provisions.

b. Verify the Availability of Federal Assistance. Before a potential recipient requests federal assistance, it should verify in FTA's electronic award and management system (EAMS) that the amount of federal assistance to be accessed is available for the Award. Federal assistance should not be requested in amounts greater than the "Available Funds" reported in FTA's EAMS.

c. Payment Methods. FTA makes all payments by the Treasury's Automated Clearing House (ACH) method of payment, regardless of the dollar amount involved. ACH electronically sends payment to a payee's account. The payments to recipients are made using various methods of payments.

(1) Electronic Clearing House Operation (ECHO) Payment. ECHO is a FTA Web-based application system that processes drawdown payment requests from FTA recipients. Recipients can access ECHO via the Internet to submit their drawdown request. ECHO then transmits requests approved for payment to the Recipients financial institution through Treasury's ACH process. For further information, *See* FTA's "ECHO System Users Manual for Grantees," at: https:\\ftaecho2.fta.dot.gov/

(2) Requisition Payment. If the requisition payment method is used, the Standard Form 270 (SF-270), "Request for Advance or Reimbursement" form is required to be submitted to the Federal Aviation Administration, Enterprise Service Center (ESC) in Oklahoma City, via DELPHI e-Invoicing System or DELPHI Markview system. Instructions for completing SF-270 and the ESC's mailing address can be found in

Appendix H. FTA recipients that receive federal assistance through cooperative agreements may not process payments through the ECHO system.

(3) Reimbursement Procedures for Research, Technical Assistance, and Training Programs. *See* the latest edition of FTA Circular 6100, "Research, Technical Assistance and Training Program: Application Instructions and Program Management Guidelines."

d. Policy for ECHO Payments. FTA makes all payments by electronic funds transfer, regardless of the dollar amount involved. Payments are made under the electronic clearing house operation Web (ECHO-Web) system, by means of an ECHO control number assigned to the recipient. The recipient agrees to comply with the ECHO-Web requirements contained in the Treasury Regulations, 31 CFR part 205, "Rules And Procedures For Efficient Federal-State Funds Transfers," specifically 2 CFR § 200.305, "Payments," and as established by the "Guidelines for Disbursements" set forth in FTA's ECHO-Web system operations manual.

Disbursement guidelines are in accordance with policies established in Department of Treasury Circular 1075, part 205, "Withdrawal Of Cash From The Treasury For Advances Under Federal Grant And Other Programs," and by its FTA Grant or Cooperative Agreement. These guidelines state that the recipient must commit itself to:

(1) Initiating cash drawdowns for immediate disbursement (no later than three business days for disbursement). Excess federal assistance held more than three days must be returned to FTA along with any interest earned. *See* Chapter VI, subsection 9.f, "Repayment to FTA," below for detailed information on requirements to remit interest.

(2) Reporting large disbursements to the appropriate FTA Regional Office in advance of the transaction settlement date. The recipient must provide a minimum notice of two business days for a disbursement totaling $50 million or more, and a minimum notice of five days when a disbursement of more than $500 million is anticipated. When specific information has not been finalized, the recipient must inform the FTA Regional Office of approximate amount(s) and approximate deposit date(s). The FTA Headquarters Accounting Payable Division should be notified by the Regional Office due to the requirement that FTA must provide the Treasury 48 hours notification prior to drawdown of federal assistance exceeding $50 million.

(3) Reporting cash disbursements and balances in a timely manner as required by FTA.

(4) Imposing the same standards of timing and amount upon any secondary recipients.

(5) Limiting drawdowns to eligible costs to implement the Award, which would include NOT drawing down federal assistance for its Award in an amount that would exceed the sum obligated by FTA or the current available balance for that Award.

(6) Providing control and accountability for all federal assistance consistent with FTA requirements and procedures for use of the ECHO System.

(7) Furnishing reports of cash disbursements and balances, when required by means of the FFR.

(8) Recipients cannot return funds (overpayments/credits) for projects from which you have not requested funds in three or more years. ECHO-Web does not support return payments with accrued interest, isolated return payments, or return payments too large to be offset by a requested amount. Recipients who are not able to use the ECHO-Web system shall follow the repayment procedures listed in section 9(g) below.

e. Excessive or Premature Withdrawals.

(1) General. For excess payments made by the Federal Government to a recipient that does not qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. § 3701 *et seq.*, the recipient agrees that the amount of interest owed to the Federal Government depends on whether the recipient is a state or state instrumentality.

(a) A recipient that is a state or state instrumentality agrees that interest owed to the Federal Government will be determined in accordance with Treasury regulations, "Rules and Procedures for Efficient Federal State Funds Transfers," 31 CFR part 205 that implements Section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b).

(b) A recipient that is neither a state nor a state instrumentality agrees that common law interest owed to the Federal Government will be determined in accordance with joint Treasury/DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 CFR § 901.9(i).

(2) Exceptions. The only exceptions to the requirement for prompt refunding are when the federal assistance involved:

(a) Will be disbursed by the recipient within seven calendar days, or

(b) Is less than $10,000 and will be disbursed within 30 calendar days.

These exceptions to the requirement for prompt refunding should not be construed as approval for a recipient to maintain excessive federal assistance. They are applicable only to excessive amounts of federal assistance that are erroneously drawn.

(3) Return of Federal Assistance. The return of federal assistance is accomplished as follows:

(a) FTA requests the recipients to remit the excessive cash and any interest electronically to FTA using the U.S. Treasury's Pay.Gov Financial Collection System. (**https://www.Pay.Gov**). Once you have gained accessed to the website Under Find Public Forms: (1) Click on **"Search by Agency Name,"** (2) Click on the Letter "**F**" for Federal Transit Administration, (3) Click on the Name: **Federal Transit Administration,** and (4) Select the appropriate Payment Form Name: **FOIA Fee, Grantee Refunds/Over Payments, or Vendor/Employees.**

(b) The recipient must provide the requested information and submit. Note: If making an ACH payment from your bank account, please select ACH Direct Debit as the payment type.

(c) Although paper checks are discouraged, recipients may mail refund checks to FAA (FTA's Accounting Service Center) in Oklahoma City. If a single check is used to remit the premature withdrawal and the interest, the amount of each must be separately identified and accompanied by a letter explaining the purpose of the check(s) and identifying the federal award identification number or federal award identification number or project number. A copy of the check and the letter should be sent to the recipient's Regional Office. Additional information pertaining to the mailing of checks is located below in Chapter VI, Subsection 9.f.

f. Repayment to FTA. FTA program managers will be alert to any information that may indicate a potential repayment. The following are possible reasons for payments becoming due to FTA:

(1) Insufficient eligible funds to match federal payments,

(2) The sale of equipment acquired or improved to implement the Award, or

(3) Excessive federal assistance in the account for the Award.

g. Repayment Procedure. Required repayments must be made promptly to FTA. Recipients can submit repayments through the Treasury's Pay.Gov Financial Collection System (**https://www.Pay.Gov**) for all refunds and repayments. Refunds by check should be processed using the following steps:

(1) Make the check payable to the "Federal Transit Administration."

(2) Mail all checks to the FAA/Federal Transit Account as follows:

(a) **Regular Mail**: DOT/FAA (FTA Account), ESC, AMZ-300, PO Box 269041, Oklahoma City, OK 73125, or

(b) **Overnight Mail**: DOT/FAA (FTA Account), ESC, AMZ-300, 6500 S. Macarthur Blvd, HQS Bldg RM 181, Oklahoma City, OK 73169, Attn: Rhonda Manuel (405-954-8195.

(3) Specify the applicable federal award identification number(s) or project number(s) on the check.

(4) Provide a written explanation as to purpose of payment.

(5) Send a copy of the check and the explanatory letter to the recipient's regional or metropolitan office.

(6) While ECHO-Web is primarily designed as a payment request system, the system can accommodate return payments you may need to make on a project if your return meets processing parameters. The Department of Treasury does not withdraw funds from your organization's bank account, so **any amounts returned via ECHO-Web must be netted against requested funds.** This means, you can make a return payment only if you are also making a new payment request on the same form, and your Total Requested Amount (which calculates your Request minus your Return) is a positive number. Recipients who are not able to use the ECHO-Web system shall follow the repayment procedures listed above.

h. Requirement to Remit Interest. FTA's Master Agreement states that recipients must remit any interest earned on excess federal assistance the recipient has drawn down and failed to spend for eligible activities under the Award, or any federal interest held in excess of three calendar days. Payments of interest must be made by using the Pay.Gov Financial Collection System.

Unless waived by FTA, interest will be calculated at rates imposed by the Department of the Treasury (**http://fms.treas.gov/**) beginning on the fourth day after the federal assistance was deposited in the recipient's bank or other financial depository. Upon notice by FTA to the recipient of specific amounts due, the recipient must promptly remit to FTA any excess federal assistance payments, including any interest due.

10. DEOBLIGATION OF FEDERAL ASSISTANCE. FTA reserves the right to deobligate unspent federal assistance before closeout of the Award.

11. DEBT SERVICE RESERVE. Transit agencies that use debt financing in the form of bonds are often required by the terms of the Bond Indenture to establish a Debt Service Reserve (DSR). The Bond Trustee is required to establish a DSR with the proceeds of the bond issue. Usually, the DSR remains untouched for the term of the bonds, and is used to make a subsequent debt service payment ONLY if the recipient has insufficient funds to do so. If the DSR is used in this way, the recipient must replenish the DSR from its own funds and within the time frames outlined in the Bond Indenture or be in default. When there is no default, the balances remaining in the DSR are used to make the last debt service payment to the extent of such balances. Required DSRs may now be financed with FTA assistance. However to the extent of FTA assistance, any particular DSR may only be used to pay principal and/or interest on the bonds. Therefore, recipients intending to fund a DSR with FTA assistance may also wish to include some non-FTA funds if the terms of the Bond Indenture allow use of DSR for other items, such as late fees or Bond Trustee expenses related to default.

12. RIGHT OF FTA TO TERMINATE. The recipient agrees that, upon written notice, FTA may suspend or terminate all or part of the federal assistance provided herein if the recipient is, or has been, in violation of the terms of the Award, or if FTA determines that the purposes of the statute under which the Award is authorized would not be adequately served by continuation of federal assistance for the Award. Any failure to make reasonable progress or other violation of the Award that significantly endangers substantial performance of the Award will be deemed to be a breach of the Grant or Cooperative Agreement accompanying the Award.

    In general, termination of any federal assistance for the Award will not invalidate obligations properly incurred by the recipient and concurred in by FTA before the termination date, to the extent those obligations cannot be canceled. However, if FTA determines that the recipient misused FTA assistance by failing to make adequate progress, to make reasonable use of the real property, facilities, or equipment acquired or improved for the Award, or to honor the terms of the Award, FTA reserves the right to require the recipient to refund the entire amount of federal assistance provided herein or any lesser amount as may be determined by FTA.

    Expiration of any time period established for the Award, does not, by itself constitute an expiration or termination of the Award.

    Neither the receipt by the recipient of any federal assistance for the Award nor the closeout of federal participation in the Award shall constitute a waiver of any claim that FTA may otherwise have arising out of the Award.

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APPENDIX A
TABLE OF FTA CIRCULARS

Circular	Program	Topic	Title	Date
C 4710.1		Civil Rights	Americans with Disabilities Act: Guidance	10-5-15
C 5100.1	5339	Bus and Bus Facilities Program	Bus and Bus Facilities Program: Guidance and Application Instructions	05-18-15
C 6100.1E	5312, 5313, 5214, 5322	Technology Development and Deployment	Research, Technical Assistance and Training Program: Application Instructions and Program Management Guidelines	04-10-15
C 5300.1	5337	State of Good Repair Program	State of Good Repair Grant Program: Guidance and Application Instructions	01-28-15
C 9040.1G	5311	Capital Facilities and Formula Grant Program	Formula Grants for Rural Areas: Program Guidance and Application Instructions	10-24-14
C 7050.1		Joint Development	Federal Transit Administration Guidance on Joint Development	08-25-14
C 9070.1G	5310	Capital Facilities and Formula Grant Programs	Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions	06-06-14
C 9030.1E	5307	Urbanized Area Formula Program	Urbanized Area Formula Program: Program Guidance and Application Instructions	01-16-14
C 4220.1F		Procurement	Third Party Contracting Guidance	03-13-13
C 4702.1B		Civil Rights	Title VI Requirements and Guidelines for Federal Transit Administration Recipients	10-01-12
C 5010.1D		Grants Management - General	Grant Management Requirements	08-27-12

Circular	Program	Topic	Title	Date
C 5010.1E		Grants Management - General	Award Management Requirements	TBD
C 4703.1		Environmental Review/Civil Rights	Environmental Justice Policy Guidance For Federal Transit Administration Recipients	08-15-12
C 9300.1B	5309	Capital Facilities and Formula Grant Programs	Capital Investment Program Guidance and Application Instructions	11-01-08
C 8100.1C		Planning	Program Guidance for Metropolitan Planning and State Planning and Research Program Grants	09-01-08
C 5800.1		Safety and Security for Major Capital Projects	Safety and Security Management Guidance for Major Capital Projects	08-01-07
C 9045.1		Formula Grant Programs	New Freedom Program Guidance and Application Instructions	05-01-07
C 9050.1		Formula Grant & Direct Apportionment Programs	The Job Access and Reverse Commute (JARC) Program Guidance and Application Instructions	05-01-07
C 5200.1A		Grants Management - General	Full-Funding Grant Agreements Guidance	12-05-02
C 7008.1A		Policy and Program Development	Financial Capacity Policy	01-30-02
C 7020.1		Policy and Program Development	Cross-Border Leasing Guidelines	04-26-90
C 4715.1A		Civil Rights	Human Resource Programs (Section 20) Application and Project Management Guidelines	07-26-88

Circular	Program	Topic	Title	Date
C 4704.1		Civil Rights	Equal Employment Opportunity Program Guidelines for Grant Recipients	07-26-88
C 2710.4A		Accounting	Revenue Based Sampling Procedures for Obtaining Fixed-Route Bus Operating Data Required Under the Section 15 Reporting System	07-22-88
C 2710.2A		Accounting	Sampling Procedures for Obtaining Demand-Responsive Bus System Operating Data Required Under the Section 15 Reporting System	07-22-88
C 2710.1A		Accounting	Sampling Procedures for Obtaining Fixed-Route Bus Operating Data Required Under the Section 15 Reporting System	07-18-88
C 2710.6		Accounting	Section 15 Accounting and Reporting Release Number 1	07-01-88
C 2710.7		Accounting	Section 15 Accounting and Reporting Release Number 2	07-01-88
C 9500.1		Capital Facilities and Formula Grant Programs	Intergovernmental Review of FTA Planning, Capital and Operating Programs and Activities	03-30-84

To receive copies of circulars in special readability formats, or circulars not shown above, please contact the FTA Office of Management Planning, TAD-10, 1200 New Jersey Ave. SE, E44-404 - East Building, Washington, DC 20590.

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APPENDIX B

FEDERAL FINANCIAL REPORT (FFR)

Recipients of federal assistance through the Federal Transit Administration (FTA) are required to report on the progress and financial status of each Award, 2 CFR part 200.

Recipients are required to report through the FTA's electronic award and management system (EAMS). Supplemental information may be attached, however, an attached document may not be substituted for the electronic submission.

Best Practices

Recipients must provide a narrative detailing the financial state of the Award and clearly explain any anticipated cost overruns or savings identified under the Award. If no financial activity occurred during the reporting period, the recipient must still file a financial report. The explanation must include a narrative to explain "no activity." For example, if no action has occurred over subsequent reports, and milestones originally indicated progress that should have occurred, then an explanation is needed. Or, if your milestone progress report indicates contract awards or work completed, your FFR should reflect that activity, or otherwise explain how the MPR differs from the financial activity during the reporting period. Use the narrative to explain a significant unliquidated balance if there has been demonstrated progress to complete the scope of work of the Award.

Completing the Form

If the application includes the use of an indirect rate for reimbursement, it must be reported in the FFR each quarter. You must have an approved rate on file with the FTA. If you are not certain if you have an approved indirect cost rate, contact your Regional Office. For more information about what is an indirect cost rate and the requirements for indirect cost rates please refer to Chapter III and Chapter VI of this Circular.

Recipients must indicate at the time of application if they will use an indirect cost rate and the amount of the rate to be applied, even if the recipient in a position where it can apply the "de minimis" rate. *See* Appendix F for more information on "de minimis rates."

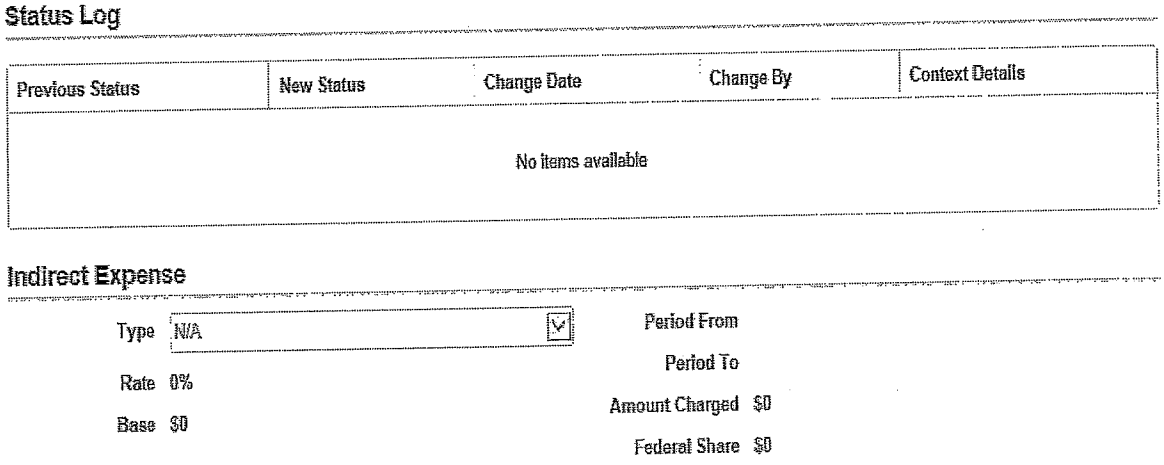
Recipients must report in the FFR, in accordance with the reporting cycle of that Award. This may be monthly, quarterly, or annually. The following information must be included each reporting period:

Indirect Expense – If a recipient is charging indirect costs to the Award, complete this section. Enter the total amount of indirect expenses incurred on a cumulative basis.

Please note that a recipient must have an approved cost allocation plan in order to incur these expenses.

Enter the following information:

a. Type – Enter indirect expense type from the drop down menu
b. Rate – Rate approved by the cognizant agency
c. Base – Total base amount from which the indirect cost rate is determined
d. Period from / Period to – Period covered by the approved rate
e. Amount Charged – Total amount of indirect expenses charged to the Award on a cumulative basis
f. Federal Share – Federal share of the indirect expenses charged



If you have two rates, apply the rate that impacts the majority of the work/activities within the award. Use the narrative to report the secondary rate including the same level of information in the form.

The following outlines each line within the electronic form:

A. *Federal Cash on Hand at the Beginning of the Period* – Enter any cash on hand if any at the beginning of the award. In most instances this line will be zero.

B. *Federal Cash Receipts* - Enter the current period amount of actual cash received from FTA for this Award as of the reporting period end date. Report this amount on a cash basis.

C. *Federal Cash Disbursements* - The amount of Federal fund disbursed during the last reporting period. Disbursements are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expenses charged to the Award, and the amount of payments made to subrecipients and contractors. Report this amount on a cash basis.

D. *Federal Cash on Hand at End of Period* –If there is Cash on Hand, provide an explanation in the submission remarks, explaining why the drawdown was made prematurely or other reasons for the excess cash. (Lines A+B-C)

E. *Total Federal Funds Authorized* – This is the total amount of all federal funds in the Award including amendments.

F. *Federal Share of Expenditures* – Enter the total amount of federal expenditures. Expenditures are the total project costs (less any rebates, refunds or other credits) incurred on the accrual basis of accounting. Examples of expenditures are: (1) the sum of cash disbursements for direct charges for property and services; (2) the amount of indirect expense incurred; (3) the amount of in-kind contributions, and (4) net increase or decrease in Accounts Payable or Accrued Expenses.

G. *Recipient Share of Expenditures* – Of the total project costs, enter the amount the recipient will pay. You can enter this information in either the "This Period" section or the "Cumulative section"; however do not enter in both sections. Enter the recipient share of actual cash disbursements or outlays (less any rebates, refunds, or other credits) including payments to subrecipients and contractors. This amount may include the value of allowable third party in-kind contributions. Note: On the final report, this line should be equal to the Total Recipient Share Required (Line N). Report this amount on an accrual basis.

H. *Total Expenditures* – Total of all expenditures (total project costs) as of the end of the reporting period. (Lines F + G)

I. *Federal Share of Unliquidated Obligations* - Enter the Federal portion of unliquidated obligations (binding commitments entered into for goods and services not yet received. Note, on the final report, this line should be zero. Report this amount on an accrual basis.

J. *Recipient Share of Unliquidated Obligations* – Enter the local share of unliquidated obligations.

K. *Total Unliquidated Obligations* – Total of the recipient's binding commitments entered into for goods and services not yet received. (Lines I + J)

L. *Total Federal Share* - The total FTA is expected to contribute to the Total Project Costs. This is the sum of Federal Share of Expenditures (Line F) and Federal Share of Unliquidated Obligations (Line I). (Lines F + I)

M. *Unobligated Balance of Federal Funds* – Federal share of the Award that the recipient has not entered into a binding commitment. (Lines E – L)

N. *Total Recipient Share Required* – This amount represents the total required recipient share for the Award including amendments. The required recipient share should include all matching and cost sharing provided by recipients and third-party providers to meet the level required by FTA.

O. *Remaining Recipient Share to be Provided* – The Total Recipient Share required (Line N) minus the sum of Recipient Share of Expenditures (Line G) and the Recipient Share of Unliquidated Obligations ((Lines N - (G + J).

P. *Federal Program Income on Hand at the Beginning of the Reporting Period* – Enter any unspent Federal Program Income on hand at the beginning of the Award. In most instances, this line will be zero.

Q. *Total Federal Program Income Earned* - Enter the amount of Federal program income earned as of the end of the reporting period. Program income is gross income received by the recipient or subrecipient directly generated by an activity supported under the Award, or earned only as a result of the Award during the period of performance. Examples include income from: (1) fees for services performed, (2) from the use or rental of real or personal property acquired with funds available under the Award, (3) from the sale of advertising and concessions, and (4) from the sale of commodities or items fabricated under an Award.

R. *Federal Program Income Expended in Accordance with the Deduction Alternative* - Enter the amount of program income that was used to reduce the Federal share of the total project cost. Only to be used if the recipient does not exercise the provisions of the Common Rule. As a rule of thumb, this field is zero.

S. *Federal Program Income Expended in Accordance with the Addition Alternative* - (FTA does not allow this method and should be zero).

T. *Federal Program Income Expended on Allowable Transit Capital and Operating Expenses* – of the Federal program income earned, enter the amount the recipient is allowed to spend on allowable transit capital operating expenses.

SCREEN SHOTS ARE SUBJECT TO CHANGE AT THE DISCRETION OF FTA. THIS IS THE SECONDARY VIEW OF INFORMATION POPULATED IN THE FFR MODULE.

Financial Status

Transactions	Previous	Current	Cumulative
A. Federal Cash on Hand at Beginning of Period	$0	$0	$0
B. Federal Cash Receipts	$0	$0	$5,009,563
C. Federal Cash Disbursements	$0	$0	$5,009,563
D. Federal Cash on Hand at End of Period (A + B - C)	$0	$0	$0
E. Total Federal Funds Authorized			$6,108,240
F. Federal Share of Expenditures	$5,009,563	$0	$5,009,563
G. Recipient Share of Expenditures	$1,252,391	$0	$1,252,391
H. Total Expenditures (F + G)	$6,261,954	$0	$6,261,954
I. Federal Share of Unliquidated Obligations			$28,706
J. Recipient Share of Unliquidated Obligations			$7,177
K. Total Unliquidated Obligations (I + J)			$35,883
L. Total Federal Share (F + I)			$5,038,269
M. Unobligated Balance of Federal Funds (E - L)			$1,069,971
N. Total Recipient Share Required			$1,527,060
O. Remaining Recipient Share to be Provided [N - (G + J)]			$267,492
P. Federal Program Income on Hand at Beginning of Period			$0
Q. Total Federal Program Income Earned			$0
Q. Total Federal Program Income Earned		$0	
R. Federal Program Income Expended in accordance with the deduction alternative		$0	
S. Federal Program Income Expended in accordance with the addition alternative		$0	
T. Federal Program Income Expended on allowable Transit Capital and Operating expenses		$0	
U. Federal Unexpended Program Income ((P + Q - R) or (P + Q - S) or (P + Q - T))		$0	

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APPENDIX C

REAL ESTATE ACQUISITION MANAGEMENT PLAN

A Model for the development of a Real Estate Acquisition Management Plan (RAMP)

1. GENERAL. The purpose of a RAMP is to guide the assessment of real estate goals and the methodology for real estate acquisition. RAMPs are the recipient's planning tool. If done correctly, they will identify schedule issues, difficult parcels, the need for expanded advisory assistance, and staff issues. For projects participating in the New Starts or Small Starts programs, RAMPs are required as part of the Project Management Plan (PMP).

2. RAMP CONTENT.

   a. Introduction.

      (1) Short history of pertinent elements of project,

      (2) Control agreements; intergovernmental contracts, pending solicitations, *etc.*,

      (3) Legal requirements; The Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (Uniform Act), various state laws, local requirements, *etc.*,

      (4) Geographical description of the project,

      (5) Physical description of proposed acquisitions, number of parcels, total acquisitions, partial acquisitions, anticipated number of relocations, *etc.*,

      (6) Acquisitions, partial acquisitions, anticipated number of individuals and businesses that require relocation, *etc.* and

      (7) General outline of process and authority to condemn.

   b. Organizational Structure.

      (1) Identification of staff functions,

      (2) Identification of contractual functions,

      (3) Identification of the source of the plan, and the process for plan changes, corrections, modifications as a result of negotiations, *etc.*,

      (4) Party that can establish the offer of just compensation, and

      (5) Party that can authorize condemnation.

c. Acquisition Schedule.

(1) Set out the timeframe for acquisition, relocation, and total length of time needed,

(2) Date for initiation of negotiations for the project,

(3) Difficulties and potential delays,

(4) How will progress reporting be handled and who will receive this information, and

(5) Identification of a critical path for right-of-way(s).

d. Real Estate Cost Estimate.

(1) Background of the estimate; when was it done, and what was the basis of the estimate,

(2) Need for any update of the cost estimate, and

(3) How will the estimate be compared to actual costs as the project progresses.

e. Acquisition Process.

Recipients must have procedures and processes to acquire real estate. This may be demonstrated in the RAMP or through detailed procedures attached to the RAMP. The procedures should detail how the tasks of real estate acquisition and relocation will be accomplished and should be appropriate for the complexity and size of the project.

(1) Plans—who prepares, who can modify, what is process for considering property owner's request to modify, *etc.*,

(2) Ownership and title information—how is this gathered, what is the contractual requirements, are those contracts in place, and what is the process to update and correct errors and omissions,

(3) Appraisal—who will do the appraisals, what are the contracting requirements if necessary, what is the estimate duration of this task, how many copies of the appraisals will be obtained, and will the appraisals be shared with property owners,

(4) Appraisal Review process—who will accomplish this task, what is the scope of the task in general, what is the turnaround time for this work, will the review handle updates of appraisals, will the review handle modification of appraisals based on owner claims, will the review be used to support administrative settlements, and is FTA Concurrence required,

(5) Establishment of offer of Just Compensation—who does this and what is the basis of this offer,

(6) Negotiations—who will negotiate, what is their authority, who must approve administrative settlements and other concessions to property owners, what documentation is required for the negotiations' process, who signs the letter of offer, will the negotiator also handle relocation payments, how is the interface between negotiations and condemnation handled, what documents will the negotiator be expected to provide to legal for settlement and condemnation, and will the negotiator be present at closing,

(7) Administrative settlements – who will handle these, how do they originate, who prepares the document(s), who can approve settlement, and is FTA concurrence is required,

(8) Closing/Escrows—who will provide this service, how will it function, what is the estimated length of time to deposit funds to escrow for closing, what documents will be necessary, how will closings be conducted, what form of deeds will be used, and how will property taxes be paid and exempted, and

(9) Condemnation—who will authorize lawsuits, who will file, what is relationship between the recipient and its legal personnel, what authority does attorney have for settlement, what are the progress reporting requirements.

f. Relocation Process

A recipient must plan for relocation activities per regulatory requirements. However, the extent of the planning should be commensurate with the number, complexity and type of displacements. A recipient must be able to demonstrate available comparable replacement housing for every residential displacement,

(1) Staffing and Administration—how will the relocation function be staffed, who is authorized to compute payments, who will approve payments, what is the relocation process to be utilized in the project, what level of advisory services will be needed, who will provide advisory services, what is the claims payment process, what is the time to pay a relocation claim, what authority and controls will be needed for advanced claims, what documentation will be retained in the files, and what forms will be used,

(2) What is the anticipated extent of displacement, types of displacement, availability of replacement housing and business sites, contemplated problems associated with the displacement, and

(3) Appeals—what are the legal requirements for administrative appeals, how will the agency establish and staff an appeal function, who will receive appeal requests, what is the appeal process.

g. Other Components.

(1) Document Control—How are documents filed, what length of time will original paper documents be maintained, what is the organization of parcel files, condemnation files, *etc.*, and what is the contents of a typical file,

(2) Property management—who will perform the property management tasks, what is included in the Scope of Work for property management, who contracts for demolition, what are the contracting requirements, what are the reporting requirements, and what is the statement of policy regarding rental property for extended possession by tenants and owners,

(3) What are the contracting requirements, the reporting requirements, statement of policy regarding rental property for extended possession by tenants and owners, and policy regarding rental of property not immediately needed for project, and

(4) Excess property inventory and utilization plan—who will prepare and track excess parcels, what is the process to evaluate these tracts, who will determine when to sell the excess property, how will the disposition of proceeds be distributed, and what are agency, state, or local restrictions on the sale of public property.

h. Appendix materials

(1) Copies of internal procedures for various functions, such as relocation and negotiation, and

(2) Copies of acquisition and relocation brochures with a statement as to the need to update any of these documents.

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APPENDIX D

GUIDE FOR PREPARING AN APPRAISAL SCOPE OF WORK

1. GENERAL. The Scope of Work is a written set of expectations that form an agreement or understanding between the appraiser and the recipient as to the specific requirements of the appraisal, resulting in a report to be delivered to the recipient by the appraiser. It includes identification of the intended use and intended user; definition of market value; statement of assumptions and limiting conditions; and certifications. This agreement should specify the performance requirements, or it should reference them from another source, such as the recipient's approved Right-of-Way or Appraisal Manual. The Scope of Work must address the unique, unusual, and variable appraisal performance requirements of the appraisal. Either the appraiser or the recipient may recommend modifications to the initial Scope of Work, but both parties must approve changes.

2. EXAMPLE. The example below is intended to be a guide for recipients preparing a Scope of Work for real estate appraisals.

   a. Scope of Work: The appraiser must, at a minimum:

      (1) Provide an appraisal meeting the recipient's definition of an appraisal, or, at a minimum, the definition of an appraisal must be compatible with the definition found at 49 CFR § 24.2(a)(3).

      (2) Afford the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property.

      (3) Perform an inspection of the subject property. The inspection should be appropriate for the appraisal problem, and the Scope of Work should address:

         (a) The extent of the inspection and description of the neighborhood and proposed project area,

         (b) The extent of the subject property inspection, including interior and exterior areas, and

         (c) The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property).

      (4) In the appraisal report, include a sketch of the property and provide the location and dimensions of any improvements. Also, the report should include adequate photographs of the subject property and comparable sales and provide location maps of the property and comparable sales.

      (5) In the appraisal report, include items required by the acquiring recipient, usually consisting of the following:

(a) The property right(s) to be acquired, *e.g.*, fee simple, easement, *etc.*,

(b) The value being appraised (usually fair market value), and its definition,

(c) The appraisal of contaminated property that would get at the difference in value, were the property clean,

(d) The date of the appraisal report and the date of valuation,

(e) The realty/personalty report required at 49 CFR § 24.103(a)(3)(i)–(v),

(f) The known and observed encumbrances, if any,

(g) The title information,

(h) The location,

(i) The zoning requirements and restrictions,

(j) The property's present use, and

(k) At least a 5-year sales history of the property.

(6) In the appraisal report, identify the highest and best use. If the highest and best use is in question or different from the existing use, provide an appropriate analysis identifying the market-based highest and best use.

(7) Present and analyze relevant market information. Specific requirements should include research, analysis, and verification of comparable sales. Inspection of the comparable sales should also be specified.

(8) In developing and reporting the appraisal, disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project. If necessary, the appraiser may cite the Jurisdictional Exception or Supplemental Standards Rules under Uniform Standards of Professional Appraisal Practice (USPAP) to ensure compliance with USPAP while following this Uniform Act requirement.

(9) The appraiser's analysis, opinions, and conclusions must be included in the appraisal report.

b. Additional Requirements for a Scope of Work:

(1) Intended Use: This appraisal is to estimate the fair market value of the property, as of the specified date of valuation, for the proposed acquisition of the property rights specified (i.e., fee simple, *etc.*) for a federally assisted project.

(2) Intended User: The intended user of this appraisal report is primarily the acquiring agency (ultimately the recipient), but its funding partners may review the appraisal as part of their program oversight activities.

(3) Definition of Market Value: This is determined by state law, but includes the following:

(a) The buyer and seller are typically motivated;

(b) Both parties are well informed or well advised, each acting in what he or she considers his or her own best interest;

(c) A reasonable time is allowed for exposure in the open market;

(d) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(e) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(4) Certification: The required certification should be in the State's approved Appraisal Procedures or part of state law.

(5) Assumptions and Limiting Conditions: The appraiser shall state all relevant assumptions and limiting conditions. In addition, the acquiring agency may provide other assumptions and conditions that may be required for the particular appraisal assignment, such as:

(a) The data search requirements and parameters that may be required for the project,

(b) Identification of the technology requirements, including approaches to value, to be used to analyze the data,

(c) Need for machinery and equipment appraisals, soil studies, potential zoning changes, *etc.*,

(d) Instructions to the appraiser to appraise the property "As Is" or subject to repairs or corrective action, and

(e) As applicable include any information on property contamination to be provided and considered by the appraiser in making the appraisal.

3. Environmental Conditions. One of the persistently difficult issues is the valuation of property with potential and/or known hazardous materials or contamination. Therefore, it is important that the environmental conditions of all parcels considered for acquisition be assessed according to ASTM standards. The following guidance will assist recipients in

developing a Scope of Work for assessing the environmental conditions of parcels and for appraising those that are found to be contaminated or have hazardous materials present.

Recipients must investigate the environmental conditions of all parcels proposed for purchase in order to identify potential contamination on the property. This site investigation work includes conducting a Phase I Environmental Site Assessment (ESA) (in accordance with ASTM standards) for all parcels. If the Phase I ESA identifies potential contamination or recognized environmental concerns, a Phase II ESA should be conducted to confirm the presence and extent of any contamination. The ESAs should have been completed as a part of the overall environmental review process undertaken during an early phase of the project. If not, the recipient should conduct ESAs for all parcels prior to the appraisal.

The presence of contamination is regarded as a detriment to the property and should be handled like other negative characteristics or limitations of a property relative to the determination of its highest and best use (HBU) or greatest market value. From an appraisal perspective, dealing with contamination is much like addressing other conditions affecting the use and value of the property. It is FTA policy that the effect of contamination on the value of a property should be considered in the appraisal to the extent feasible. If the contaminant is a detriment for the property, the reduction in value of the property attributable to that detriment should be considered by the real estate appraiser.

Appraisers are not expected to be experts in the field of property contamination. Therefore, the results of the previously mentioned ESAs must be provided to the appraiser before the appraisal work is initiated, whenever feasible. The recipient or its environmental consultant should be available to answer any questions that an appraiser may have regarding the environmental testing report(s) that pertains to the HBU and the value of the property. The appraiser is expected to be competent in the analysis of the impact of contamination on the value of the parcel being appraised.

The environmental reports, estimated remediation costs and specifications for the required remediation, along with any specific direction from the recipient regarding the applicability of state law or agency procedures related to the valuation of contaminated property, must be provided to the appraiser. The existence of detrimental contamination must also be defined by the recipient in analyzing the approach to the appraisal problem. The approach will necessarily involve an understanding of the purpose and use of the property within the context of the construction design plans of the project, specifically in terms of excavation that may be required for the intended use or use only as surface parking, as examples. These issues as they pertain to the subject site should be included as an element of the appraisal scope of work that is mutually agreed to by the recipient and the appraiser. Recipients must not offer a conclusion of the impact of the contamination, but should insist that the appraiser evaluate the value impact of its presence using the expert site reports and project construction plans.

The following guidance is offered to assist a recipient valuing a contaminated site. It is general and broad. FTA should be contacted for further specific direction.

a. For commercial/industrial properties:

(1) Situation: The property contains contaminants or hazardous materials that must be mitigated before any use of the property is practical. Approach: In cases such as this, generally, the cost to mitigate the contaminated materials to permit the HBU should be deducted from the potential estimated value to achieve that highest and best use.

(2) Situation: The property is contaminated, but can be used at its highest and best use without remediation. Approach: In this situation, the appraiser would value the property at its highest and best use and only make an adjustment if the market indicates such an adjustment is necessary. Other similarly contaminated property would be a good indication of value and any further adjustment may not be required.

(3) Situation: An improved property has building components that contain hazardous materials (asbestos, lead paint, *etc.*) and the market considers these items to be a detriment to value. Approach: In this situation, the appraiser should consider the appropriate cost to cure such deficiencies, based on market dynamics.

(4) Situation: The property formerly was contaminated but is now remediated. Approach: In this situation, the appraiser should consider any residual "stigma" that might be caused by possible future requirements or the market resistance to such remediated properties when similar clean substitute properties are available. Comparable sales of similarly remediated property would be the best indication of value.

b. For residential properties:

(1) Situation: The building contains hazardous material, but the market apparently does not adjust for such items (*e.g.*, asbestos shingles, asbestos floor tile). Approach: In this situation, the appraiser should note the items and note that the market does not make an adjustment for them. Valuation would be unaffected by the presence of the contaminant in such a case. If remediation is only necessary because of the development of the transit project, that remediation would be an eligible expense under the Award given that the expense cannot be recouped from the seller and would be needed for the project.

(2) The building contains hazardous materials and the market typically requires remediation or adjustment (friable exposed asbestos, chipping lead paint). Approach: In this situation, the estimated cost to cure the detriment to value should be considered and deducted from the value as clean, unless this cost to cure is greater than the present value of the structure.

Regardless of the type of property, it is important that the effect on value of the contamination or hazardous material be measured by the impact on the value of the property assuming a typical market transaction based on HBU analysis and the degree of non-contamination dictated by the project construction specifications regarding construction activity on that parcel property.

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APPENDIX E

ROLLING STOCK STATUS REPORT

1. GENERAL. When an agency is disposing of vehicles that have met their minimum useful life that have a fair market value greater than $5,000, or is disposing of vehicles before they reach their minimum useful life, or is requesting a revision to the Award affecting those vehicles, the Rolling Stock Status Report (*See* example on next page) should include the following information:

   a. Vehicle Number

   b. Year

   c. Make/Model

   d. Vehicle Identification Number (VIN)

   e. Date Placed in Revenue Service

   f. Date Removed from Revenue Service

   g. Minimum Useful Life (Years and Miles)

   h. Mileage (At the time Removed from Revenue Service)

   i. Total Number of Vehicles

   j. Total Number of Peak Vehicle Requirements

   k. Total Number of Spare Vehicles

2. REPLACEMENTS AT THE END OF THE MINIMUM USEFUL LIFE. Rolling Stock Status Reports must accompany a request for a replacement vehicle that has met its minimum useful life. The report will be used to verify that a vehicle has met the minimum useful life and that there is no remaining federal interest. **Note:** Though the remaining Federal interest might be zero, if the asset's value exceeds $5,000, FTA may still be entitled to reimbursement. *See* Chapter IV, Subsection 4.n "Disposition," for more information about project property valued over $5,000.

3. EARLY DISPOSITION. Rolling Stock Status Reports must accompany a request for early disposition of vehicles. The report will be used to verify the remaining federal interest in the vehicles.

4. Example. An example of a Rolling Stock Status Report for vehicles pending disposal with and without remaining federal interest or budget revision affecting vehicles is shown below.

Rolling Stock Status Report

TransAmerica Buses

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Veh #	Vehicle Year	Make/Model or Vehicle Description	Date in Service	Out of Service	Fed Useful Life (yr)	Actual Service (yr)	Remaining yrs	Remaining % based on yrs	Actual Mileage	Minimum Useful life Mileage	Remaining % based on miles	Total Federal Share	Remaining Fed Share based on yrs	Remaining Fed Share based on miles
151	2000	30' New Flyers	09/01/00	09/01/07	7	7.0	0.00	-0.04%	200,000	200,000	0.00%	$120,000	-	-
152	2000	30' New Flyers	09/01/00	09/03/07	7	7.0	-0.01	-0.12%	200,000	200,000	0.00%	$120,000	-	-
154	2000	30' New Flyers	09/01/00	09/02/07	7	7.0	-0.01	-0.08%	210,000	200,000	-5.00%	$120,000	-	-
155	2000	30' New Flyers	09/01/00	09/02/07	7	7.0	-0.01	-0.08%	205,000	200,000	-2.50%	$120,000	-	-
156	2000	30' New Flyers	03/01/01	03/01/06	7	5.0	2.00	28.53%	140,851	200,000	29.57%	$120,000	$34,239	$35,489
157	2000	30' New Flyers	03/01/01	03/01/06	7	5.0	2.00	28.53%	154,649	200,000	22.68%	$120,000	$34,239	$27,211
158	2000	35' Flexible	03/01/01	06/03/06	10	5.3	4.74	47.40%	200,000	350,000	42.86%	$120,000	$56,877	$51,429
159	2001	35' Flexible	03/01/01	06/03/06	10	5.3	4.74	47.40%	300,000	350,000	14.29%	$195,000	$92,425	$27,857
160	2001	35' Flexible	03/01/01	11/02/07	10	6.7	3.32	33.23%	300,000	350,000	14.29%	$195,000	$64,804	$27,857
161	2001	35' Flexible	03/01/01	07/02/07	10	6.3	3.66	36.60%	325,000	350,000	7.14%	$195,000	$71,375	$13,929
163	2001	35' Flexible	03/01/01	11/02/07	10	6.7	3.32	33.23%	325,000	350,000	7.14%	$195,000	$64,804	$13,929
164	1996	40' Buses	03/21/96	04/03/06	12	10.0	1.96	16.32%	425,000	500,000	15.00%	$295,000	$48,156	$44,250
165	1996	40' Buses	06/19/96	04/03/07	12	10.8	1.21	10.05%	435,000	500,000	13.00%	$295,000	$29,635	$38,350
166	1996	40' Buses	06/19/96	04/03/07	12	10.8	1.21	10.05%	450,000	500,000	10.00%	$295,000	$29,635	$29,500
167	1996	40' Buses	06/20/96	06/02/07	12	11.0	1.04	8.70%	450,000	500,000	10.00%	$295,000	$25,661	$29,500
168	1996	40' Buses	06/23/96	06/02/07	12	10.9	1.05	8.77%	450,000	500,000	10.00%	$295,000	$25,863	$29,500

b. Financial Statements.

c. ICRP Methodology – under 2 CFR part 200, Appendix VII - the recipient may use a simplified method or multiple allocation base method for completing the indirect cost rate proposal. Generally, the simplified method is used where a recipient's major functions benefit from its indirect costs to approximately the same degree. The simplified method results in one indirect cost rate for the entire recipient. Conversely the multiple allocation base method is used where a recipient's major functions benefit from indirect costs to varying degrees. The multiple allocation base method results in two or more rates related to each operating department or similar operating departments within the recipient. The calculations of the rates depend on the type of organization, therefore refer to 2 CFR part 200 for details.

d. Supporting Documentation:

(1) Identification of the costs included in the indirect cost pool(s),

(2) Identification and description of the allocation base(s),

(3) Identification of the amount, nature, and treatment of unallowable costs and excluded items,

(4) Descriptions of the departments included in the organizational chart, including the nature of costs (direct, indirect, or combination),

(5) Please refer to the appropriate appendix of 2 CFR part 200 for additional documentation requirements (*See* 8. below),

(6) Proposal Reconciliation with Financial Statements (Note: Allocated costs must be reasonable and trackable to the financial Statements),

(7) Identification of Federal Award Direct Cost Base (Note: Bases should be reasonable and trackable to the financial statements and supporting documents); and

(8) Certification of Conformance with 2 CFR part 200. A proposal to establish an Indirect Cost Rate Proposal **will be unacceptable if the Certificate of Indirect Costs is omitted.** The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.

3. SUBMISSION REQUIREMENTS. 2 CFR part 200, Appendix VII, section D, "Submission and Documentation of Proposals," - requires that each local governmental unit or agency that receives more than $35 million in direct federal funding is required to submit a proposal to its cognizant agency for indirect costs within six months after the close of the recipient's

fiscal year. All other governmental units claiming indirect costs must develop a plan and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs.

Non-profit organizations are required to submit their ICRP to the cognizant agency within six months after the close of each fiscal year.

Institutions of higher education (IHE) should submit their indirect costs rate proposals to their cognizant agency (generally HHS or DoD). The deadlines for submission of IHE ICRPs are determined by the cognizant agency.

When a subrecipient only receives federal funds as a subrecipient, the pass-through entity will be responsible for reviewing, approving, and monitoring the subrecipient's ICRP.

When FTA is the cognizant agency for indirect costs, the ICRP should be submitted to the FTA when:

a. The recipient is working on its first federal assistance award or has not previously had an Indirect Cost Rate Proposal reviewed and accepted (note that such recipients may be eligible for the de minimis rate described in section 1 above).

b. The recipient has made a change in its accounting system which significantly impacts the previously approved Indirect Cost Rate Proposal and its basis of application.

c. The recipient's proposed Indirect Cost Rate Proposal exceeds the rate(s) last approved by FTA by more than 20 percent.

   For example if FTA approved a 20 percent rate in 2013, and the rate increased to 23 percent in 2014, and again to 25 percent in 2015 -- the 2015 rate would be required to be submitted to FTA for approval as it increased by more than 20 percent).

d. The recipient changes the Indirect Cost Rate Proposal methodology.

e. The recipient is either a local governmental unit that receives more than $35 million in direct federal funding or a non-profit entity. In accordance with 2 CFR part 200, these entities must submit their plan annually to their cognizant agency.

The FTA may allow the recipient to use a provisional rate for initial submissions and required resubmissions pending completion of the review/negotiation. After the rate is approved, that rate and subsequent rates should be applied as fixed rates until a resubmission is required. Fixed rate means an indirect cost rate which is applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period and the difference between the estimated costs and the actual allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

Under unique circumstances, on a case by case basis, the FTA will approve a predetermined rate. For definitions of provisional rates, final rates, fixed rates, and predetermined rates please refer to 2 CFR part 200, Appendix VII, section B, Definitions.

4. FTA REPORTING REQUIREMENTS. Award Budgets should clearly identify proposed indirect costs that are budgeted separately or are part of an activity line item (ALI). Either documentation of the approved indirect cost rate or a statement that the recipient's rate needs to be approved by its cognizant agency should be submitted with an application for federal assistance.

   After the Award, recipients that have approved indirect cost rate proposals should include indirect cost information in the Federal Financial Report (FFR). Indirect costs should be included in total expenditures. Also, the FFR should include the indirect expense type, the rate approved by the cognizant agency, the total base amount on which the indirect cost rate is determined, the period covered by the approved rate, the total amount of indirect expenses charged to the Award on a cumulative basis, and the federal share of the indirect expenses charged. Recipients that do not have approved indirect cost rate proposals should not charge indirect costs to FTA Awards. *See* FFR instructions for entering data for single simplified rates or multiple rates.

5. FTA REVIEWS OF INDIRECT COST RATE PROPOSALS. ICRPs submitted to the FTA for approval are subject to review. The purpose of an indirect cost rate proposal review is to ensure that the methodology and the rates proposed by the recipient meet the criteria contained in 2 CFR part 200 and FTA policies as a condition for reimbursement.

6. ICRP APPROVAL. Whenever the cognizant agency gives approval to an Indirect Cost Rate Proposal, such approval is formalized, distributed to all interested federal agencies, and applicable to all federal Awards in accordance with 2 CFR part 200.

7. REFERENCES

   The detailed requirements for development and submission of indirect cost rate proposals are contained in:

   a. 2 CFR part 200, appendix III for Institutions of Higher Education,

   b. 2 CFR part 200, appendix IV for Non-Profit Organizations,

   c. 2 CFR part 200, appendix VII for States and Local Governments and Indian Tribes,

   d. Guidelines and illustrations of indirect cost rate proposals are provided in a brochure published by the Department of Health and Human Services entitled "*A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government (ASMB C-10),*" and

   e. All official Frequently Asked Questions and updates to 2 CFR part 200.

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APPENDIX F

INDIRECT COST RATE PROPOSALS

1. GENERAL. Indirect cost rate proposal means the documentation prepared by a recipient or subrecipient to substantiate its request for the establishment of an indirect cost rate. Individual operating agencies (governmental department or agency) and non-profit recipients, normally charge federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under federal awards. Indirect costs include: (1) The indirect costs originating in each department or agency of the recipient carrying out federal awards and (2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs (*See* Appendix G).

   Recipients that intend to seek the Federal Transit Administration (FTA) reimbursement for indirect costs must prepare an Indirect Cost Rate Proposal (ICRP) unless the Recipient has never negotiated an indirect cost rate and chooses to use a de minimis rate of 10% of the modified total direct cost. Also, recipients that already have an established indirect cost rate may apply for an extension of their current negotiated indirect cost rate for a period of up to four years. Note that only final or predetermined rates may be extended.

   For those recipients that do not choose to use the de minimis rate or receive approval of an extension of their current negotiated indirect cost rate, the following are basic requirements for an ICRP.

   a. ICRPs must be updated annually.

   b. The updated ICRP must be retained and made available for review at the recipient's annual single audit.

   c. The initial ICRP must be approved by FTA or another cognizant federal agency. The cognizant agency is the agency responsible for reviewing and approving the recipient's ICRP. For subsequent approvals, please refer to Section 3 of this appendix.

   d. Additionally, all costs in the ICRP must be supported by formal accounting records to substantiate the propriety of eventual charges. The ICRP of the recipient should cover all applicable costs. It should also cover costs allocated under plans of other agencies or organizational units which are to be included in the costs of other federally sponsored programs. To the extent feasible, ICRPs of all agencies rendering assistance to the recipient should be presented in a single document.

2. DOCUMENTATION REQUIREMENTS. Documentation requirements for an ICRP vary based on the type of organization. *See* section 7 below for references to the requirements for each type of organization. In general the ICRP should contain, but need not be limited to, the following:

   a. An Organization Chart.

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APPENDIX G

COST ALLOCATION PLANS

1. GENERAL. As authorized by 2 CFR § 200.9, FTA uses the term "cost allocation plan" (CAP) to mean central service cost allocation plan. Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a state, local government, or Indian tribe on a centralized basis to its departments and agencies. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, *etc.*, to operating agencies on a centralized basis. A central service cost allocation plan provides the process by which these central service costs can be identified and assigned to benefited activities on a reasonable and consistent basis. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to federal Awards.

   The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under federal Awards and will be documented as described in 2 CFR part 200, appendix V, section E, "Documentation Requirements for Submitted Plans." Costs of central services omitted from the plan will not be reimbursed. Following are the general requirements for CAPs:

   a. CAPs must be updated annually and made available for review at the recipient's single audit.

   b. CAPs must be approved in accordance with the requirements of the federal cognizant agency for indirect costs.

   c. Additionally, all costs in the plan must be supported by formal accounting records to substantiate the propriety of eventual charges. Central service costs that are not included in the plan should not be reimbursed by federal Awards. To the extent feasible, CAPS should be presented in a single document.

2. DOCUMENTATION REQUIREMENTS. All proposed plans must be accompanied by the following:

   An organization chart sufficiently detailed to show operations including the central service activities of the state/local government whether or not they are shown as benefitting from central service functions;

   a. A copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan;

b. A certification of conformance which states that the plan was prepared in accordance with 2 CFR part 200, appendix V, subsection E.4 and the federal Award(s) to which they apply.

c. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

d. The same costs that have been treated as indirect costs have not been claimed as direct costs.

e. Federal Awards contain only allowable costs, and the plan was prepared in a manner that treated similar costs consistently among the various federal awards and between federal and non-federal awards/activities.

f. A proposal to establish a CAP will be unacceptable if the CAP Certificate is omitted. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the plan.

For details related to documentation requirements for allocated and billed central service costs refer to 2 CFR part 200, appendix V, section E, Documentation Requirements for Submitted Plans, numbers 2, 3, and 4, respectively.

3. SUBMISSION REQUIREMENTS. The Cost Allocation Plan must be submitted to the recipient's Federal Cognizant Agency for approval based on the following:

a. Each state will submit its CAP to the Department of Health and Human Services each year.

b. Each major local government (one which receives more than **$100 million in direct federal awards)** is required to submit the CAP to its cognizant agency for indirect costs annually.

c. Non-major governmental units must prepare and retain CAPs for the Single Audit and submit CAPs only when required by the cognizant agency.

d. When FTA is the cognizant agency, the CAP must be submitted under the following circumstances: (1) for an initial plan, (2) annually for major local governments, (3) for a change in organizational structure and accounting system that may significantly impact the CAP, (4) for a change in CAP methodology, and (5) upon request for all other entities. All CAPs must be retained for audit.

Whenever the cognizant agency gives approval to a government-wide CAP, such approval should be formalized, distributed to all interested federal agencies, and applicable to all federal Awards in accordance with 2 CFR part 200, Appendix VII. *See* information below.

2 CFR part 200, Appendix VII., section D. "Submission Requirements" states:

1. Each state will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Part and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a local government only receives funds as a subrecipient, the pass-through entity will be responsible for monitoring the subrecipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency for indirect costs on a case-by-case basis.

4. FTA REPORTING REQUIREMENTS. Generally central service costs are included in the indirect cost pool(s) of the operating governmental departments or agencies. Therefore central service costs are generally included in the overall indirect cost information that is required in the FFR.

5. FTA REVIEWS OF CAPs. CAPs submitted to the FTA for approval are subject to review. The purpose of a CAP proposal review is to ensure that the methodology and the rates proposed by the recipient meet the criteria contained in 2 CFR part 200 and FTA policies as a condition for reimbursement.

6. REFERENCES

The detailed requirements for development and submission of central service cost allocation plans are contained in:

a. 2 CFR Part 200, Appendix V,

b. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "*A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government* (ASMB C-10)," and

c. All official Frequently Asked Questions and updates to 2 CFR part 200.

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APPENDIX H

REQUEST FOR ADVANCE OR REIMBURSEMENT (SF–270)

1. GENERAL. Recipients that receive federal assistance through cooperative agreements, and any recipients that receive funds through Grant or Cooperative Agreements (or Other Agreements) that are not permitted to receive payment or reimbursement via ECHO, agree as follows:

   a. New recipients must first provide financial information to enroll in the automated clearinghouse (ACH) system. Assistance will be provided by the Federal Aviation Administration's (FAA's) Enterprise Service Center (ESC) and the administering office.

   b. Recipient must complete and attach an original Standard Form 270, "Request for Advance or Reimbursement" (*See* Sample Request for Advance or Reimbursement Form [SF–270] Exhibit 2 of this appendix) with supporting documentation when submitting request for reimbursement via DELPHI e-Invoicing System or DELPHI Markview system. Upon receipt of the SF-270 payment request and supporting documentation, ESC will disburse payments by ACH deposit for all requests approved by the authorized FTA Project Manager in the DELPHI e-Invoicing System or DELPHI Markview system.

   c. Recipients may also complete and submit an original SF-270 to ESC at:

      FAA Mike Monroney Aeronautical Center
      Library, AMA–300A
      6500 S. MacArthur Blvd.
      Oklahoma City, OK 73169

      However, the preferred method of submission is electronically through the DELPHI e-Invoicing systems listed above.

2. INSTRUCTIONS. Instructions for completing an SF-270 (Exhibit 2) are printed on its reverse side. In addition, the following instructions should assist recipients in completing this form:

   a. Only the total column on this form should be completed, unless the project involves more than one funding ratio. In such instances, the other columns are also to be used.

      In addition, recipients should round all figures to the nearest dollar; that is, amounts of $0.50 or over would be rounded to the higher dollar. For example: if the other than federal share is computed to be $2,572.70, the amount reported would be $2,573.

   b. Block #5—All requisitions should be numbered consecutively beginning with #1 as the first requisition. Suggested format should include the fiscal year and sequential number

for each individual voucher. For example, the payment request number for the recipient's first voucher submitted in FY 2016 would appear on the SF-270 as follows: 2016–001.

c. Block #8—The first requisition covers the date the federal assistance was awarded (unless the project had pre-award authority, through the end of the period for which reimbursement is requested). When a requisition requests reimbursement only, the "ending" date will be the same date on which outlays are reported on line 11a of this form. If the reimbursement and/or an advance is being requested, the "ending" date should reflect the period through which the advance is needed.

   All requisition report periods should run consecutively. For example, if a requisition is submitted for the period 1/1/16 to 3/31/16, the next requisition will begin 4/1/16.

d. Block #9—The name of the recipient should be exactly as indicated on the Grant Agreement, Cooperative Agreement, or Other Agreement. Recipients should avoid abbreviation and spell out the entire name of the organization.

e. Block #11—Line A—The "as of" date should be the date for which the recipient has actual costs recorded. This date should be the same as the "to" date, Block #8, unless the recipient is requesting an advance.

   (1) Line B—Represents the amount applicable to program income that was required to be used for the project or program by terms of the Grant Agreement, Cooperative Agreement, or Other Agreement.

   (2) Line D—Represents the estimated expenditures for the advance period, both the FTA share and the non-federal share.

   (3) Line F—The non-federal share of line E, depending on the funding ratio of a particular project.

   (4) Line G—The federal share of line E, depending on the funding ratio for a particular project.

   (5) Line H—The total of previous requisition(s) submitted. This line should not represent actual payment received because the recipient may have submitted a requisition that is in the process of being paid. Requisition #1 on this line should be zero.

      Note that the recipient should complete only the "total" column of Block #11, unless the Grant Agreement, Cooperative Agreement, or Other Agreement specified that there is more than one funding source supporting the project. In such cases, separate columns should be utilized for each funding source.

   (6) Line I—The federal share now requested represents the total amount of the SF-270 reimbursement that will be forwarded to the recipient.

4. REVIEW OF THE SF-270. Each SF-270 for federal assistance will be reviewed in light of the periodic milestone progress reports (MPRs) and financial reports required for each project. Changes requiring amendments to the Grant Agreement, Cooperative Agreement, or Other Agreement or prior approval of a revision to the Award Budget must be approved before federal assistance for these changes are requisitioned.

EXHIBIT 1

ACH VENDOR/MISCELLANEOUS PAYMENT ENROLLMENT FORM

OMB No. 1510-0056

This form is used for Automated Clearing House (ACH) payments with an addendum record that contains payment-related information processed through the Vendor Express Program. Recipients of these payments should bring this information to the attention of their financial institution when presenting this form for completion.

PRIVACY ACT STATEMENT

The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579). All information collected on this form is required under the provisions of 31 U.S.C. 3322 and 31 CFR 210. This information will be used by the Treasury Department to transmit payment data, by electronic means to vendor's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Automated Clearing House Payment System.

AGENCY INFORMATION

FEDERAL PROGRAM AGENCY
DOT, Federal Transit Administration

AGENCY IDENTIFIER:	AGENCY LOCATION CODE (ALC):	ACH FORMAT:
	69-08-0001	☑ CCD+ ☐ CTX ☐ CTP

ADDRESS:
1200 New Jersey Avenue S.E., East Building, Fifth Floor (E-54)

Washington, DC 20590

CONTACT PERSON NAME:	TELEPHONE NUMBER:
Millie Fields	(202) 366-6685

ADDITIONAL INFORMATION:
Mail completed ACH form, with original signatures, to the above address.

PAYEE/COMPANY INFORMATION

NAME	SSN NO. OR TAXPAYER ID NO.

ADDRESS

CONTACT PERSON NAME:	TELEPHONE NUMBER:
Note: Contact name will be verified with the FTA Project Lead	( )

FINANCIAL INSTITUTION INFORMATION

NAME:

ADDRESS:

ACH COORDINATOR NAME:	TELEPHONE NUMBER:
	( )

NINE-DIGIT ROUTING TRANSIT NUMBER:
— — — — — — — — —

DEPOSITOR ACCOUNT TITLE:

DEPOSITOR ACCOUNT NUMBER:	LOCKBOX NUMBER:

TYPE OF ACCOUNT:
☐ CHECKING ☐ SAVINGS ☐ LOCKBOX

SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL: (Could be the same as ACH Coordinator)	TELEPHONE NUMBER:
	( )

NSN 7540-01-274-9925

SF 3881 (Rev 12/90)
Prescribed by Department of Treasury
31 U S C 3322; 31 CFR 210

INSTRUCTIONS FOR COMPLETING SF 3881 FORM

Instructions for Completing SF 3881 Form

1. Agency Information Section - Federal agency prints or types the name and address of the Federal program agency originating the vendor/miscellaneous payment, agency identifier, agency location code, contact person name and telephone number of the agency. Also, the appropriate box for ACH format is checked.

2. Payee/Company Information Section - Payee prints or types the name of the payee/company and address that will receive ACH vendor/miscellaneous payments, social security or taxpayer ID number, and contact person name and telephone number of the payee/company. Payee also verifies depositor account number, account title, and type of account entered by your financial institution in the Financial Institution Information Section.

3. Financial Institution Information Section - Financial institution prints or types the name and address of the payee/company's financial institution who will receive the ACH payment, ACH coordinator name and telephone number, nine-digit routing transit number, depositor (payee/company) account title and account number. Also, the box for type of account is checked, and the signature, title, and telephone number of the appropriate financial institution official are included.

Burden Estimate Statement

The estimated average burden associated with this collection of information is 15 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Management Service, Facilities Management Division, Property and Supply Branch, Room B-101, 3700 East West Highway, Hyattsville, MD 20782 and the Office of Management and Budget, Paperwork Reduction Project (1510-0056), Washington, DC 20503.

EXHIBIT 2

REQUEST FOR ADVANCE OR REIMBURSEMENT (See instructions on back)	OMB APPROVAL NO. 0348-0004	PAGE OF PAGES
	1. TYPE OF PAYMENT REQUESTED: a. "X" one or both boxes: ☐ ADVANCE ☐ REIMBURSEMENT; b. "X" the applicable box: ☐ FINAL ☐ PARTIAL	2. BASIS OF REQUEST: ☐ CASH ☐ ACCRUAL
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED	4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY	5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST
6. EMPLOYER IDENTIFICATION NUMBER / 7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER	8. PERIOD COVERED BY THIS REQUEST: FROM (month, day, year)	TO (month, day, year)
9. RECIPIENT ORGANIZATION Name: Number and Street: City, State and ZIP Code:	10. PAYEE (Where check is to be sent if different than item 9) Name: Number and Street: City, State and ZIP Code:	

11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED

PROGRAMS/FUNCTIONS/ACTIVITIES →	(a)	(b)	(c)	TOTAL
a. Total program outlays to date (As of date)	$	$	$	$ 0.00
b. *Less:* Cumulative program income				0.00
c. Net program outlays (*Line a minus line b*)	0.00	0.00	0.00	0.00
d. Estimated net cash outlays for advance period				0.00
e. Total (*Sum of lines c & d*)	0.00	0.00	0.00	0.00
f. Non-Federal share of amount on line e				0.00
g. Federal share of amount on line e				0.00
h. Federal payments previously requested				0.00
i. Federal share now requested (*Line g minus line h*)	0.00	0.00	0.00	0.00
j. Advances required by month, when requested by Federal grantor agency for use in making prescheduled advances — 1st month				0.00
2nd month				0.00
3rd month				0.00

12. ALTERNATE COMPUTATION FOR ADVANCES ONLY

a. Estimated Federal cash outlays that will be made during period covered by the advance	$
b. *Less:* Estimated balance of Federal cash on hand as of beginning of advance period	
c. Amount requested (*Line a minus line b*)	$ 0.00

AUTHORIZED FOR LOCAL REPRODUCTION (Continued on Reverse) STANDARD FORM 270 (Rev. 7-97) Prescribed by OMB Circulars A-102 and A-110

13. CERTIFICATION

I certify that to the best of my knowledge and belief the data on the reverse are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

SIGNATURE OR AUTHORIZED CERTIFYING OFFICIAL	DATE REQUEST SUBMITTED
	August 13, 2007
TYPED OR PRINTED NAME AND TITLE	TELEPHONE (AREA CODE, NUMBER, EXTENSION)

This space for agency use

Public reporting burden for this collection of information is estimated to average 60 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 (0348-0004), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

INSTRUCTIONS FOR COMPLETING SF-270 FORM

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory; specific instructions for other items are as follows:

Item	Entry
2	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.
4	Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.
8	Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.
Note:	The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.
11	The purpose of the vertical columns (a), (b), and (c) is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.
11a	Enter in "as of date," the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.
11b	Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.
11d	Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.
13	Complete the certification before submitting this request.

STANDARD FORM 270 (Rev. 7-97) Back

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APPENDIX I

REPORTING ON REAL PROPERTY INVENTORY

1. GENERAL. The Report on Real Property Inventory must be maintained by the recipient with its files. The report on real property status should include, at a minimum, the following information:

   a. Parcel Number,

   b. Property Address / Location,

   c. Tax ID,

   d. Description of Real Property,

   e. Date of Property Acquisition,

   f. Minimum Useful Life of the Improvement,

   g. Real Property Ownership Type(s),

   h. Size: Acreage, Square or Linear Units,

   i. Real Property Cost (acquisition, relocation, renovation, railroad easement cost/period of the easement),

   j. FTA Share Percentage of Property Cost,

   k. FTA Award Number,

   l. Current Use of the Property,

   m. Disposition Status,

   n. Appraised Fair Market Value,

   o. Appraisal Date,

   p. Net Sale's Proceeds,

   q. Federal Interest, and

   r. Date of Property Disposition.

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APPENDIX J

AWARD AMENDMENT AND BUDGET REVISION GUIDELINES

1. GENERAL. There are three ways to modify an Award: (1) through a revision to the Award Budget, (2) through an Administrative Amendment, or (3) through a formal Amendment to the Award. Formal amendments (commonly called "amendments") are significant changes that warrant a new Agreement for the initial or current Award. These actions require FTA initial review and concurrences and final reviews and concurrences, similar to the process for a new application. However, some specific steps may not be required, such as Department of Labor (DOL) reviews, depending on the type of modification. Once an Amendment is awarded, the Agreement accompanying the Award reflects the current active and prevailing terms and conditions between FTA and the recipient.

   The changes to the format of applications and how funds are obligated in TrAMS necessitate changes and additional considerations when evaluating a modification to an Award. TEAM awards will be treated differently than TrAMS awards, as the system's structures are significantly different whereby what constitutes a budget revision versus an amendment has also changed.

   The recipient should contact the FTA regional or metropolitan office for questions relating to requests for a modification to its Award, including which type of modification is appropriate for the proposed action. Modifications are electronically submitted, reviewed, and approved in FTA's EAMS.

2. AMENDMENTS TO TEAM AWARDS IN TrAMS.

   a. Amendments to add new funds to a TEAM award migrated to TrAMS is restricted to the following:

      (1) The existing award with executed Full Funding Grant Agreements, or

      (2) The existing award with an existing Project Construction Agreement, TIGER grants, or other similar agreements which have a commitment to a multi-year funding program for a large capital project.

   b. Amendments to add funds to a TEAM award with existing "below the line" or "Other Budget" activities waiting for the full allocation of formula funds FY 2015 (or prior), provided:

      (1) The action does NOT require DOL review, and

      (2) The action does NOT require the addition of any new Scopes Codes and/or ALIs to the existing TEAM award; the Scope must already exist in the award.

c. Amendments to TEAM awards may only be for the same fund source, TEAM awards may not be converted into a multi-sourced grant (or super grant).

3. AMENDMENTS TO NEW TrAMS AWARDS.

a. Any action that adds new funds to increase to the Award, either federal or non-federal funds, is always an amendment.

b. An action to add new funds for preventive maintenance or operating expenses, as a single activity or when combined with other activities, may be amended to obligate two additional fiscal years of funding (this means the initial fiscal year allocation plus modifications to add two additional fiscal year allocations). The allocations may not cross Authorizations within the Award.

c. An action to deobligate any amount of funds, or reduce the amount of the Award, either the federal or non-federal amount is always an amendment.

d. An action to add or delete a project to an active Award, even if the overall award amount remains the same, is always an amendment.

e. An action to "zero out" an ALI and the Scope Code, where the scope of work will not be completed under the Award is always an amendment. When the action is to zero out an ALI, the recipient must zero out the milestones in the next MPR so the recipient no longer needs to report on that activity. If the action to zero out an ALI, but does not zero out the Budget Scope Code, the reviewer must consider how the action impacts the scope of work before determining if it is a Budget Revision or an Amendment.

Example: A construction Budget Scope Code includes an ALI for Force Account work and Third Party Contracted Services. If the recipient determines the full amount of work can be accomplished by Force Account (or vice versa) and 100% of the funds from the ALI is moved from one to the other under the same Scope Code, it can be a budget revision because the scope of work can still be completed and the Scope Code is not zeroed out.

Example: In a Project or within a Budget Scope Code where there are multiple ALIs for different activities, such as Administration/Maintenance Facility Upgrades under the Bus Support Equipment Scope Code, and Purchase 5 Articulated buses. If you move 100% of funds from either ALI, to the other Scope code, and zero it out, it is an amendment. If either activity will no longer be completed, it is change in scope of work and necessitates an amendment.

f. An action that modifies the scope of work, such as elimination of an activity, or significantly changes the quantity of the original intended action, is always an amendment.

g. An action to change place of performance or location, regardless if it changes NEPA, is a change in the award agreement and is an amendment.

h. Actions to complete amendments should be monitored; an undue number of amendments may indicate administrative issues with the overall Award or recipient.

4. PERIOD OF PERFORMANCE MODIFICATIONS. A change to the period of performance requires a contractual change to the Award to document the new, agreed timeframe. The period of performance must be revised if expenditures are to be allowable beyond the current approved completion date of the Award. Any change to the end date of the award requires prior approval and is an amendment.

5. ADMINISTRATIVE AMENDMENTS. Administrative Amendments are actions initiated by FTA. These actions are generally conducted in coordination with recipient of the Award in question. These amendments include the following actions:

   a. A change in the fiscal year or type of fund source,

   b. A clarification of the terms and conditions of the Award, and

   c. A deobligation of funds within an active Award, when the award is not is not being closed out.

   Administrative Amendments may **NOT** be used to change the performance period or to change the Fund Purpose/Activity Code of new TrAMS Awards. Budget revisions must be initiated to change a Fund Purpose/Activity Code of any prior TEAM grants or cooperative agreements. Should there be a need to alter the name of the recipient of an Award, coordination with FTA's Office of Budget and Policy (TBP) is required to ensure compliance with FTA and government-wide requirements.

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APPENDIX K

REFERENCES

1. Federal Transit Laws, Title 49, United States Code, chapter 53.

2. Fixing America's Surface Transportation (FAST) Act, Public Law 114-94, December 4, 2015.

3. Moving Ahead for Progress in the 21st Century (MAP-21), Pub. L. 112-141, July 6, 2012.

4. Federal-Aid Highway and Surface Transportation Laws, Title 23, United States Code.

5. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, Aug. 10, 2005, as amended by the SAFETEA-LU Technical Corrections Act of 2008, Pub. L. 110-244, June 6, 2008.

6. Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, June 9, 1998, as amended by the TEA 21 Restoration Act, Pub. L. 105-206, July 22, 1998.

7. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, Dec. 18, 1991.

8. Federal Public Transportation Act of 1978, Pub. L. 95-599, Nov. 6, 1978.

9. Americans with Disabilities Act (ADA) of 1990, as amended, 42 U.S.C. § 12101 *et seq.*

10. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794.

11. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*

12. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*

13. National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*

14. Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 *et seq.*

15. Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*

16. Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a.

17. Section 404 of the Clean Water Act, as amended, 33 U.S.C. § 1344.

18. Policy on Lands, Wildlife, and Waterfowl Refuges, and Historic Sites, 49 U.S.C. § 303.

19. Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108.

20. Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1602 *et seq.*

21. Internal Revenue Code, Non-profit Organizations, 26 U.S.C. § 501(c).

22. The Rehabilitation Act of 1973, 29 U.S.C. § 794d, as amended.

23. Lobbying Restrictions, The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended.

24. Infrastructure Finance, 23 U.S.C. chapter VI.

25. Disadvantaged Business Enterprises, 23 U.S.C. § 101 note.

26. Money and Finance, 31 U.S.C. §§ 6304 and 6305.

27. Congressional Declaration of Policy Respecting Insular Areas, 48 U.S.C. § 1469a.

28. Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*

29. The Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended, 42 U.S.C. § 4601 *et seq.*

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36. DOT regulations, "Organization and Delegation of Powers and Duties," 49 CFR part 1.

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44. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 27.

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48. DOT regulations, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR part 38.

49. "Transportation for Individuals with Disabilities: Passenger Vessels," 49 CFR part 39.

50. DOT regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 CFR part 40.

51. FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, Subpart C.

52. FTA regulations, "Clean Fuels Grant Program," 49 CFR part 624.

53. FTA regulations, "Project Management Oversight," 49 CFR part 633.

54. FTA regulations, "Rail Fixed Guideway Systems; State Safety Oversight," 49 CFR part 659.

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58. Equal Employment Opportunity Commission regulations, "Age Discrimination in Employment Act," 29 CFR part 1625.

59. Office of Management and Budget Circular "Cost Principles for State, Local, and Indian Tribal Governments," former 2 CFR part 225.

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61. OMB Circular A-122, "Cost Principles for Non-Profit Organizations", former 2 CFR part 230.

62. Former Office of Management and Budget Circular A-94, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs," Oct. 29, 1992.

63. Executive Order 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note.

64. U.S. Department of Transportation Order to Address Environmental Justice in Minority Populations and Low-Income Populations, 62 FR 18377, Apr. 15, 1997.

65. DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons, 70 FR 74087, Dec. 14, 2005.

66. FTA Circular 4220.1F, "Third Party Contracting Guidelines," March 13, 2013, and superseded by a later edition, if published.

67. FTA Circular 4702.1B, "Title VI Requirements and Guidelines for FTA Recipients," October 1, 2012, and superseded by a later edition, if published.

68. FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, and superseded by a later edition if published.

69. FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients," July 26, 1988, and superseded by a later edition, if published.

70. FTA Circular 5010.1D, "Grant Management Requirements," August 27, 2012, and superseded by a later edition, if published.

71. FTA Circular 5800.1, "Safety and Security Management Guidance for Major Capital Projects," August 1, 2007, and superseded by a later edition, if published.

72. FTA Circular 8100.1C, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants," September 1, 2008, and superseded by a later edition, if published.

73. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions," January 16, 2014, and superseded by a later edition, if published.

74. FTA Circular 9040.1G, "Formula Grants for Rural Areas: Program Guidance and Application Instructions," October 24, 2014, and superseded by a later edition, if published.

75. FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions," May 1, 2007, and superseded by a later edition, if published.

76. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions," Nov. 1, 2008, and superseded by a later edition, if published.

77. FTA Circular 9070.1G, "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions," June 6, 2014, and superseded by a later edition, if published.

78. FTA Circular 7050.1, "FTA Guidance on Joint Development," August 25, 2014, and superseded by a later edition, if published.

79. FTA Circular 6100.1E, Research, Technical Assistance and Training Program: Application Instructions and Program Management Guidelines," April 10, 2015, and superseded by a later edition, if published.

80. FTA Circular 5100.1, Bus and Bus Facilities Program: Guidance and Application Instructions," May 18, 2015, and superseded by a later edition, if published.

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82. FTA Master Agreement FTA MA (22), Oct. 1, 2015.

83. Notice of Final Agency Guidance on Eligibility of Joint Development Improvements Under Federal Transit Law, 72 FR 5788, February 7, 2007.

84. FTA ITS Policy, **http://www.fta.dot.gov/documents/FTA_ITS_Policy.pdf.**

85. "Guidelines for Disbursements," FTA ECHO-Web System Operations Manual **http://www.fta.dot.gov/documents/ECHOWebGranteeUserManual.pdf.**

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87. Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 CFR part 771 and 49 CFR part 622.

88. U.S. Department of Treasury regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 CFR part 205.

89. U.S. Environmental Protection Agency regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 CFR part 93.

90. U.S. General Services Administration, "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," https://www.sam.gov."

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APPENDIX L

FTA REGIONAL AND METROPOLITAN CONTACT INFORMATION

Office	Area Served	Contact Information
Region I	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	Transportation Systems Center Kendall Square 55 Broadway, Suite 920 Cambridge, MA 02142–1093 Phone: 617–494–2055 Fax: 617–494–2865
Region II	New York and New Jersey	One Bowling Green Room 429 New York, NY 10004–1415 Phone: 212–668–2170 Fax: 212–668–2136
Region III	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	1760 Market St Suite 500 Philadelphia, PA 19103–4124 Phone: 215–656–7100 Fax: 215–656–7260
Region IV	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U. S. Virgin Islands	230 Peachtree Street NW Suite 1400 Atlanta, GA 30303 Phone: 404–865–5600 Fax: 404–865–5605
Region V	Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin	200 W Adams St Suite 320 Chicago, IL 60606 Phone: 312–353–2789 Fax: 312–886–0351
Region VI	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	819 Taylor St Room 8A36 Fort Worth, TX 76102 Phone: 817–978–0550 Fax: 817–978–0575
Region VII	Iowa, Kansas, Missouri, and Nebraska	901 Locust, Suite 404 Kansas City, MO 64106 Phone: 816–329–3920 Fax: 816–329–3921

Office	Area Served	Contact Information
Region VIII	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming	12300 W Dakota Ave. Suite 310 Lakewood, CO 80228–2583 Phone: 720–963–3300 Fax: 720–963–3333
Region IX	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Northern Mariana Islands	90 Seventh Street, Suite 15-300 San Francisco, CA 94103-6701 Temporary Phone: 202-731-9652 202-713-0097 Check for permanent numbers at: http://www.fta.dot.gov/about/region9.html Fax: 415–744–2726
Region X	Alaska, Washington, Oregon, and Idaho	Jackson Federal Building 915 Second Ave, Suite 3142 Seattle, WA 98174–1002 Phone: 206–220–7954 Fax: 206–220–7959
Lower Manhattan Recovery Office	Lower Manhattan	One Bowling Green, Room 436 New York, NY 10004 Phone: 212–668–1770 Fax: 212–668–2505
New York Metropolitan Office	New York Metropolitan Area	One Bowling Green, Room 428 New York, NY 10004–1415 Telephone: 212–668–2201 Fax: 212–668–2136
Philadelphia Metropolitan Office	Philadelphia Metropolitan Area	1760 Market Street, Suite 510 Philadelphia, PA 19103–4124 Telephone: 215–656–7070 Fax: 215–656–7269
Chicago Metropolitan Office	Chicago Metropolitan Office	200 West Adams Street Suite 2410 (24th floor) Chicago, IL 60606 Telephone: 312–886–1616 Fax: 312–886–0351
Los Angeles Metropolitan Office	Los Angeles Metropolitan Area	888 S. Figueroa, Suite 1850 Los Angeles, CA 90012 Telephone: 213–202–3950 Fax: 213–202–3961
Washington, DC Metropolitan Office	Washington, DC Metropolitan Area	1990 K Street NW Suite 510 Washington, DC 20006 Telephone: 202–219–3562/3565 Fax: 202–219–3545

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EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Ordinance authorizing the issuance of Water and Sewer Revenue bonds in the principal amount of not to exceed $82,500,000 for the purpose of refunding certain outstanding revenue bonds of the City.

10/19/16	Briefing	COUNCIL BILL #	CB1610-43
	Proposed Action	Originating Department	Finance/PW
	Consent	Contact Person	Susy Haugen Matt Welborn
	Action	Phone Number	X8612/X8974
10/19/16	First Reading	FOR AGENDA OF	10/19/16
10/26/16	Second Reading		
11/2/16	Third Reading		
	Public Hearing		
	Budget Advisory		

Initialed by:
Department Head
CAA
Council President

Location | **Preceding Action** | **Attachments** Ordinance | **Department(s) Approval**

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The proposed bond issue will refinance the outstanding 2009 and 2011 Water & Sewer Bonds. The purpose of this refinance is to obtain savings through lower financing costs. The estimated present value of savings is $7.4 million, which is in excess of 10%. The actual savings will be determined through competitive sale on the bond sale date. This transaction will not impact the rate forecast.

RECOMMENDATION (Exact action requested of Council):

Adopt Ordinance authorizing the issuance of Water and Sewer Revenue bonds in the principal amount of not to exceed $82,500,000 for the purpose of refunding certain outstanding revenue bonds of the City

CITY OF EVERETT
WATER AND SEWER REVENUE REFUNDING BONDS, 2016

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE REFUNDING BONDS OF THE CITY IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED $82,500,000 FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING REVENUE BONDS OF THE CITY.

Passed: November 2, 2016

Prepared by:

K&L GATES LLP
Seattle, Washington

CITY OF EVERETT
ORDINANCE NO. _____
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* This Table of Contents and the Cover Page are for convenience of reference and are not intended to be a part of this ordinance.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF WATER AND SEWER REVENUE REFUNDING BONDS OF THE CITY IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED $82,500,000 FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING REVENUE BONDS OF THE CITY.

WHEREAS, the City of Everett, Washington (the "City") now owns and operates a combined system of water supply and distribution and sewage treatment and disposal (the "System"); and

WHEREAS, the City has outstanding its water and sewer revenue bonds payable from revenues of the System as follows:

Authorizing Ordinance	Bond Designation	Date of Bonds	Principal Amount Outstanding (10/1/16)
Ordinance No. 3123-09	Water and Sewer Revenue and Refunding Bonds, 2009 ("2009 Bonds")	May 13, 2009	$ 31,945,000
Ordinance No. 3211-11	Water and Sewer Revenue Bonds, 2011 ("2011 Bonds")	March 30, 2011	48,145,000
Ordinance No. 3313-13	Water and Sewer Revenue Refunding Bonds, 2013 ("2013 Bonds")	February 14, 2013	57,750,000
Ordinance No. 3450-15	Water and Sewer Revenue Bonds, 2015 ("2015 Bonds")	November 3, 2015	50,525,000

(collectively, the "Outstanding Parity Bonds"); and

WHEREAS, the remaining outstanding 2009 Bonds mature on the following dates and in the following principal amounts:

Maturity Year (December 1)	Principal Amount	Interest Rate
2016	$ 1,190,000	4.000%
2017	1,235,000	4.000
2018	1,285,000	4.000
2019	1,340,000	4.500
2020	1,400,000	5.000
2021	1,470,000	5.000
2022	1,540,000	5.000
2023	1,620,000	5.000
2024	1,700,000	4.000
2025	1,765,000	4.125
2026	1,840,000	4.200
2027	1,920,000	5.000
2028	2,015,000	5.000
2029	2,115,000	5.000
2033	9,510,000	4.625

; and

WHEREAS, Ordinance No. 3123-09 provides that the 2009 Bonds maturing on and after December 1, 2019 (the "2009 Refunding Bond Candidates") may be redeemed in whole, or in part, on any date on and after June 1, 2019 at par; and

WHEREAS, the remaining outstanding 2011 Bonds mature on the following dates and in the following principal amounts:

Maturity Year (December 1)	Principal Amount	Interest Rate
2016	$ 1,525,000	3.00%
2017	1,575,000	2.50
2018	1,610,000	5.00
2019	1,695,000	5.00
2020	1,775,000	5.00
2021	1,865,000	5.00
2022	1,960,000	5.00
2023	2,060,000	5.00
2024	2,160,000	5.00
2025	2,270,000	5.00
2026	2,380,000	5.00
2027	2,500,000	4.25
2028	2,605,000	5.00
2029	2,740,000	4.75
2030	2,870,000	4.75
2031	3,005,000	4.80
2032	3,150,000	4.75
2035	10,400,000	5.00

; and

WHEREAS, Ordinance No. 3211-11 provides that the 2011 Bonds maturing on and after December 1, 2021 (the "2011 Refunding Bond Candidates") may be redeemed in whole, or in part, on any date on and after December 1, 2020 at par; and

WHEREAS, it appears that all or a portion of the 2009 Refunding Bond Candidates and the 2011 Refunding Bond Candidates (together, the "Refunding Bond Candidates") may be refunded with the proceeds of water and sewer revenue refunding bonds (the "Bonds"), thereby realizing savings in debt service for the benefit of the City's ratepayers; and

WHEREAS, the ordinances authorizing the Outstanding Parity Bonds provide that additional water and sewer revenue bonds may be issued on a parity with such bonds if certain conditions are met; and

WHEREAS, it appears to the City Council (the "Council") of the City that such conditions can be met and that it is in the best interests of the City and its inhabitants that the Bonds be issued on a parity with the outstanding water and sewer revenue bonds of the City; and

WHEREAS, the Bonds authorized herein shall be sold pursuant to a competitive sale as herein provided;

NOW, THEREFORE, the City of Everett does ordain, as follows:

Section 1. Definitions. As used in this ordinance the following definitions shall apply unless a different meaning clearly appears from the context:

Accreted Value means (1) with respect to any Capital Appreciation Bonds, as of any date of calculation, the sum of the amount set forth in the ordinance authorizing their issuance as the amount representing the initial principal amount of such Capital Appreciation Bonds plus the interest accumulated, compounded and unpaid thereon as of the most recent compounding date, or (2) with respect to Original Issue Discount Bonds, as of the date of calculation, the amount representing the initial public offering price of such Original Issue Discount Bonds plus the amount of discounted principal that has accreted since the date of issue. In each case, the Accreted Value shall be determined in accordance with the provisions of the ordinance authorizing the issuance of such Balloon Maturity Bonds.

Acquired Obligations mean the Government Obligations acquired by the City under the terms of this ordinance and the Escrow Agreement to effect the defeasance and refunding of the Refunded Bonds.

Annual Debt Service means the total amount of Debt Service for any Parity Bond or series of Parity Bonds or other subordinate lien evidences of indebtedness payable from Revenue of the System in any fiscal year or Base Period. From and after the New Date, (absent a written

election by a Designated Representative to the contrary) Annual Debt Service shall be calculated net of any federal subsidy legally available to pay the principal of or interest on Parity Bonds in the year of calculation. Thereafter, such federal subsidy shall no longer be included in the definition of Revenue of the System.

Approved Bid means the winning bid submitted for the Bonds.

Balloon Maturity Bonds means any evidences of indebtedness of the City payable from Revenue of the System that are so designated in the ordinance pursuant to which such indebtedness is incurred.

Base Period means any consecutive 12-month period selected by the City out of the 36-month period next preceding the date of issuance of an additional series of Future Parity Bonds.

Beneficial Owner means any person that has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

Bonds mean the City of Everett, Washington, Water and Sewer Revenue Refunding Bonds, 2016 authorized herein.

Bond Register means the books or records maintained by the Registrar containing the name and mailing address of the owner of each Bond or nominee of such owner and the principal amount and number of Bonds held by each owner or nominee.

Bond Year means each one-year period that ends on the date selected by the City. The first and last Bond Years may be short periods. If no day is selected by the City before the earlier of the final maturity date of the Bonds or the date that is five years after the date of

issuance of the Bonds, Bond Years end on each anniversary of the date of issue and on the final maturity date of the Bonds.

Call Date means June 1, 2019 for the 2009 Refunding Bond Candidates and December 1, 2020 for the 2011 Refunding Bond Candidates.

Capital Appreciation Bonds means any Future Parity Bonds all or a portion of the interest on which is compounded, accumulated and payable only upon redemption or on the maturity date of such Capital Appreciation Bonds. If so provided in the ordinance authorizing their issuance, Future Parity Bonds may be deemed to be Capital Appreciation Bonds for only a portion of their term. On the date on which Future Parity Bonds no longer are Capital Appreciation Bonds, they shall be deemed outstanding in a principal amount equal to their Accreted Value.

Chief Financial Officer means the duly qualified, appointed and acting Chief Administrative Assistant-Chief Financial Officer of the City or any other officer who succeeds to the duties now delegated to that office.

City means the City of Everett, a municipal corporation duly organized and existing under the laws of the State of Washington.

Code means the federal Internal Revenue Code of 1986, as amended, and applicable regulations.

Commission means the United States Securities and Exchange Commission.

Consultant means at any time an independent municipal financial consultant appointed by the City to perform the duties of the Consultant as required by this ordinance. For the purposes of delivering any certificate required by Section 9 hereof and making the calculation required by Section 9 hereof, the term Consultant shall also include any independent public

accounting firm or engineer appointed by the City to make such calculation or to provide such certificate.

Continuing Disclosure Agreement means the agreement entered into by the Chief Financial Officer pursuant to Section 17 of this ordinance in order to permit the successful bidder for the Bonds to comply with the Rule.

Cost of Issuance Agreement means the agreement of that name, to be entered into by the City and the Escrow Agent, providing for the payment of certain costs of issuance with respect to the issuance of the Bonds.

Costs of Maintenance and Operation means all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expense with respect to the System, but excludes depreciation, payments for debt service or into reserve accounts, costs of capital additions to or replacements of the System, municipal taxes, or payments to the City in lieu of taxes.

Council means the general legislative body of the City as the same shall be duly and regularly constituted from time to time.

Coverage Stabilization Account means the account of that name maintained pursuant to Section 6(c) of this ordinance.

Covered Bonds means the Outstanding Parity Bonds, the Bonds and those Future Parity Bonds designated in the ordinance authorizing their issuance as Covered Bonds secured by the Reserve Account.

Credit Facility means a policy of municipal bond insurance, a letter of credit, surety bond, line of credit, guarantee or other financial instrument or any combination of the foregoing,

which obligates a third party to make payment or provide funds for the payment of financial obligations of the City. There may be one or more Credit Facilities outstanding at any time.

Debt Service means, for any period of time,

(a) with respect to any outstanding Original Issue Discount Bonds or Capital Appreciation Bonds which are not designated as Balloon Maturity Bonds in the ordinance authorizing their issuance, the principal amount thereof shall be equal to the Accreted Value thereof maturing or scheduled for redemption in such period, and the interest payable during such period;

(b) with respect to any outstanding Fixed Rate Bonds, an amount equal to (1) the principal amount of such Fixed Rate Bonds due or subject to mandatory redemption during such period and for which no sinking fund installments have been established, (2) the amount of any payments required to be made during such period into any sinking fund established for the payment of any such Fixed Rate Bonds, plus (3) all interest payable during such period on any such outstanding Fixed Rate Bonds and with respect to Fixed Rate Bonds with mandatory sinking fund requirements, calculated on the assumption that mandatory sinking fund installments will be applied to the redemption or retirement of such Fixed Rate Bonds on the date specified in the ordinance authorizing such Fixed Rate Bonds; and

(c) with respect to all other series of Parity Bonds, other than Fixed Rate Bonds, Original Issue Discount Bonds or Capital Appreciation Bonds, specifically including but not limited to Balloon Maturity Bonds and Parity Bonds bearing variable rates of interest, an amount for any period equal to the amount which would have been payable for principal and interest on such Parity Bonds during such period computed on the assumption that the amount of Parity Bonds as of the date of such computation would be amortized (i) in accordance with the

mandatory redemption provisions, if any, set forth in the ordinance authorizing the issuance of such Parity Bonds, or if mandatory redemption provisions are not provided, during a period commencing on the date of computation and ending on the date 30 years after the date of issuance (ii) at an interest rate for the Base Period determined as follows: (A) if the Variable Rate Bonds have been outstanding for at least twelve (12) months, assume that the Parity Bonds bear interest at the higher of the actual rate borne by the Parity Bonds on the date of calculation or the average rate borne by the Parity Bonds over the twelve (12) months immediately preceding the date of calculation, and (B) if the Parity Bonds have been outstanding for less than twelve (12) months or are not yet outstanding, assume that the Parity Bonds bear interest at the higher of the actual rate borne by the Parity Bonds on the date of calculation or (X) if interest on the Parity Bonds is excludable from gross income under the applicable provisions of the Code, the average rate set forth on the Securities Industry and Financial Markets Association Municipal Swap Index over the twelve (12) months immediately preceding the date of calculation, or (Y) if interest is not so excludable, the average rate on Federal Securities with maturities comparable to the rate reset period (iii) to provide for essentially level annual debt service of principal and interest over such period.

Debt Service shall be net of any principal and/or interest funded out of Bond proceeds. Debt Service shall include reimbursement obligations to providers of Credit Facilities to the extent authorized by ordinance. Debt Service shall exclude the payments required to be made with respect to revenue bond anticipation notes to the extent that the ordinance authorizing their issuance provides that the bond anticipation notes will be funded with the proceeds of Future Parity Bonds.

Designated Representative means the Mayor, the Chief Financial Officer or any City employee designated by either of them.

DTC means The Depository Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York, as depository for the Bonds pursuant to Section 4 hereof.

Escrow Agent means U.S. Bank National Association, Seattle, Washington.

Escrow Agreement means the Escrow Deposit Agreement to be dated as of the date of closing and delivery of the Bonds.

Federal Securities means direct obligations of (including obligations issued or held in book-entry form on the books of), or obligations the timely payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America.

Fitch means Fitch, Inc., organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such organization shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, ***Fitch*** shall be deemed to refer to any other nationally recognized securities rating agency (other than S&P or Moody's) designated by the Chief Financial Officer.

Fixed Rate Bonds means those Parity Bonds other than Capital Appreciation Bonds, Original Issue Discount Bonds or Balloon Maturity Bonds issued under an ordinance in which the rate of interest on such Parity Bonds is fixed and determinable through their final maturity or for a specified period of time. If so provided in the ordinance authorizing their issuance, Parity Bonds may be deemed to be Fixed Rate Bonds for only a portion of their term.

Future Parity Bonds means any water and sewer revenue bonds which the City may hereafter issue having a lien upon the Revenue of the System for the payment of the principal

thereof and interest thereon equal to the lien upon the Revenue of the System of the Bonds and the Outstanding Parity Bonds.

Government Loans means the PWTF Loans, SRF Loans and subordinate lien revenue loans received by the City in the future from the State of Washington or the United States of America.

Government Obligations means those obligations now or hereafter defined as such in chapter 39.53 RCW.

Letter of Representations means the blanket issuer letter of representations from the City to DTC.

Maximum Annual Debt Service means highest dollar amount of Annual Debt Service in any fiscal year or Base Period for all outstanding Parity Bonds and/or for all subordinate lien evidences of indebtedness secured by Revenue of the System, as the context requires.

Moody's means Moody's Investors Service, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, ***Moody's*** shall be deemed to refer to any other nationally recognized securities rating agency (other than S&P and Fitch) designated by the Chief Financial Officer.

MSRB means the Municipal Securities Rulemaking Board.

Net Proceeds, when used with reference to the Bonds, means the principal amount of the Bonds, plus accrued interest and original issue premium, if any, and less original issue discount and proceeds, if any, deposited in the Reserve Account.

Net Revenue means Revenue of the System less Costs of Maintenance and Operation.

New Date means the earlier of (i) the date on which all Outstanding Parity Bonds issued prior to 2013 are no longer outstanding; or (ii) the date on which the owner(s) of at least 60% of

all Parity Bonds then outstanding consent to the amendment to the definitions of Rate Covenant, Revenue of the System and Annual Debt Service made in Ordinance No. 3313-13. For purposes of this provision, the owners of the 2013 Bonds, the Bonds and any Future Parity Bonds are deemed to have approved the amended definitions in this ordinance.

Notice of Sale means the notice of bond sale authorized to be given in Section 15 of this ordinance.

Original Issue Discount Bonds means Parity Bonds which are sold at an initial public offering price of less than 95% of their face value and which are specifically designated as Original Issue Discount Bonds in the ordinance authorizing their issuance.

Outstanding Parity Bonds means the 2009 Bonds, the 2011 Bonds, the 2013 Bonds and the 2015 Bonds.

Parity Bonds means the Outstanding Parity Bonds, the Bonds and any Future Parity Bonds.

Parity Requirement means Net Revenues equal to or greater than 125% of average Annual Debt Service for all Parity Bonds computed by deducting from Annual Debt Service the Annual Debt Service for each series or issue of Parity Bonds that is covered by ULID Assessments.

In determining the amount of Annual Debt Service "covered by ULID Assessments", Annual Debt Service for each future year is reduced by the dollar amount of ULID Assessments projected to be received during such future year, and the remaining outstanding ULID Assessments are assumed to be paid in the remaining number of annual installments with no prepayments. For purposes of determining whether the Parity Requirement has been met, transfers from the Coverage Stabilization Account shall not be taken into account.

Private Person means any natural person engaged in a trade or business or any trust, estate, partnership, association, company or corporation.

Private Person Use means the use of property in a trade or business by a Private Person if such use is other than as a member of the general public. Private Person Use includes ownership of the property by the Private Person as well as other arrangements that transfer to the Private Person the actual or beneficial use of the property (such as a lease, management or incentive payment contract or other special arrangement) in such a manner as to set the Private Person apart from the general public. Use of property as a member of the general public includes attendance by the Private Person at municipal meetings or business rental of property to the Private Person on a day-to-day basis if the rental paid by such Private Person is the same as the rental paid by any Private Person who desires to rent the property. Use of property by nonprofit community groups or community recreational groups is not treated as Private Person Use if such use is incidental to the governmental uses of property, the property is made available for such use by all such community groups on an equal basis and such community groups are charged only a *de minimis* fee to cover custodial expenses.

PWTF Loans mean the loans from the State of Washington Department of Community Development acting for the Public Works Trust Fund identified in the following chart.

Date of Issue	Original Amount	Bond Holder/Program Lender	Principal Balance (December 31, 2015)
05/04/01	$ 1,881,000	PWTF Northend Basement Sewer Flooding Reduction	$ 594,000
05/04/01	4,369,454	PWTF Phase 5 Replacement Transmission Lines 2 and 3	1,340,925
05/19/03	5,490,000	PWTF Pumped Effluent to Deepwater Outfall	2,318,000
06/30/03	841,670	PWTF Transmission Lines No 2 & 3 Replacement Phase VI	359,309
04/15/05	10,000,000	PWTF Treatment Plant Upgrade	5,277,778
06/14/06	7,000,000	PWTF Water Pollution Control Facility Expansion Phase a	4,052,632
07/07/11	10,000,000	PWTF Water Pollution Control Facility Expansion	9,323,120
01/01/11	62,063	City of Mukilteo Annexation	22,763
01/01/11	80,932	City of Mukilteo Annexation	52,751

Qualified Insurance means any non-cancelable municipal bond insurance policy or surety bond issued by any insurance company licensed to conduct an insurance business in any state of the United States (or by a service corporation acting on behalf of one or more such insurance companies) which insurance company or companies, as of the time of issuance of such policy or surety bond, are currently rated in one of the two highest Rating Categories by any Rating Agency.

Qualified Letter of Credit means any irrevocable letter of credit issued by a financial institution for the account of the City on behalf of registered owners of Parity Bonds, which institution maintains an office, agency or branch in the United States and as of the time of issuance of such letter of credit, is currently rated in one of the two highest Rating Categories by any Rating Agency.

Rate Covenant means Net Revenue in each fiscal year at least equal to 125% of the amounts required in such fiscal year to be paid as scheduled debt service (principal and interest) on all Parity Bonds, subtracting from scheduled debt service the amount of ULID Assessments collected in such year. Furthermore, in determining compliance with the Rate Covenant, Net

Revenues are subject to adjustment to reflect the following: (1) Revenue and Costs of Maintenance and Operation may be adjusted, regardless of then applicable generally accepted accounting principles, for certain items (e.g., to omit unrealized gains or losses in investments) to more fairly reflect the System's annual operating performance, and (2) from and after the New Date, (absent a written election by a Designated Representative to the contrary) scheduled debt service shall be calculated net of any federal subsidy legally available to pay the principal of or interest on Parity Bonds in the year of calculation and thereafter, such federal subsidy shall no longer be included in the definition of Revenue of the System. Scheduled debt service shall exclude the payments required to be made with respect to revenue bond anticipation notes to the extent that the ordinance authorizing their issuance provides that the bond anticipation notes will be funded with the proceeds of Future Parity Bonds.

Rating Agency means Moody's, S&P or Fitch.

Rating Category means the generic rating categories of the Rating Agency, without regard to any refinement or gradation of such rating category by a numerical modifier or otherwise.

Refunded Bonds means those 2009 Refunding Bond Candidates and 2011 Refunding Bond Candidates designated by the Designated Representative or his/her designee pursuant to authority delegated by Section 16 of this ordinance.

Registered Owner means the person in whose name the Bond is registered on the Bond Register. For so long as the Bonds are held in book-entry only form, DTC shall be deemed to be the sole Registered Owner.

Registrar means the fiscal agency of the State of Washington for the purposes of registering and authenticating the Bonds, maintaining the Bond Register, effecting transfer of ownership of the Bonds, and paying the principal of, premium, if any, and interest on the Bonds.

Reserve Account means common Reserve Account maintained pursuant to Section 7(b) of this ordinance.

Reserve Requirement means the dollar amount to be calculated with respect to all Covered Bonds and separately with respect to other Parity Bonds.

(a) With respect to Covered Bonds, the Reserve Requirement shall be equal to the least of:

(1) Maximum Annual Debt Service for Covered Bonds,

(2) 10% of the initial principal amount of Covered Bonds of each series, and

(3) 125% of average annual debt service for Covered Bonds; provided, however, that the dollar amount required to be contributed, if any, as a result of the issuance of a series of Future Parity Bonds shall not be greater than the Tax Maximum. If the dollar amount required to be contributed at the time of issuance of a series exceeds the Tax Maximum, then the amount required to be contributed shall be equal to the Tax Maximum.

(b) With respect to other series of Parity Bonds, the Reserve Requirement shall be equal to the amount specified in the ordinance authorizing the issuance of that series of Parity Bonds.

The Reserve Requirement shall be adjusted accordingly and remain in effect until the earlier of (i) at the City's option, a payment of principal of Parity Bonds or (ii) the issuance of a subsequent series of Future Parity Bonds (when the Reserve Requirement shall be re-calculated).

Revenue Bond Fund means the "Fund 401 – Public Works-Utilities Bond Redemption Subaccount" created in the office of the Chief Financial Officer for the sole purpose of paying and securing the payment of the principal of, premium, if any, and interest on Parity Bonds.

Revenue Fund means the Water and Sewer Revenue Fund of the City created by Section 6 of Ordinance No. 536-78, now known as Fund 401 – Public Works – Utilities and shall include cash accounts therein.

Revenue of the System or ***Revenue*** means all of the earnings and revenues received by the City from the maintenance and operation of the System, connection and capital improvement charges collected for the purpose of defraying the cost of capital facilities of the System, and investment earnings and income from investments of money in the Revenue Fund and the Revenue Bond Fund or from any other investment of Revenues. Excluded from Revenue of the System are government grants, proceeds from the sale of System property, City taxes collected by or through the System, principal proceeds of bonds and earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund System obligations (until commingled with other earnings and revenues of the System) or held in a special account for the purpose of paying a rebate to the United States Government under the Code. ***Revenue of the System*** shall also include any federal or state reimbursements of operating expenses to the extent such expenses are included as ***Costs of Maintenance and Operation***; *provided, however,* that Revenue of the System shall not include ULID Assessments. From and after the New Date, unless declined by a written election by a Designated Representative, the term ***Revenue of the System*** shall not include any federal subsidy legally available to pay the principal of or interest on Parity Bonds. For purposes of determining compliance with the Rate Covenant, amounts withdrawn from the Coverage Stabilization Account shall increase ***Revenue*** for the period in

which they are withdrawn, and amounts deposited in the Coverage Stabilization Account shall reduce ***Revenue*** for the period during which they are deposited. Credits to or from the Coverage Stabilization Account that occur within 90 days after the end of a fiscal year may be treated as occurring within such fiscal year.

Rule means the Securities and Exchange Commission's Rule 15c2-12 under the Securities Exchange Act of 1934.

S&P means Standard & Poor's, a Division of The McGraw Hill Companies, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, ***S&P*** shall be deemed to refer to any other nationally recognized securities rating agency (other than Moody's and Fitch) designated by the Chief Financial Officer.

Savings Target means a dollar amount equal to at least four percent (4.0%) of the outstanding principal of the Refunded Bonds.

SRF Loans mean the State Revolving Fund loans identified in the following chart.

Date of Issue	Original Amount	Bond Holder/Program Lender	Principal Balance (December 31, 2015)
10/01/04	$ 4,040,000	SRF Clearwell No 2	$ 2,225,737
10/01/05	4,040,000	SRF Clearwell No 2	2,338,947
10/01/06	3,030,000	SRF Clearwell No 2	1,913,684
03/04/08	4,040,000	SRF Design & Const. of 2nd 5-Million Gallon Clearwell	2,773,154
03/03/09	3,030,000	SRF Recovered Water Outfall	1,014,298
02/26/14	1,994,497	SRF Bond St CSO Control Facilities	1,812,598

Surety Bond means one or more of the surety bond(s), if any, issued by the Surety Bond Issuer on the date of issuance of the Bonds for the purpose of satisfying all or a portion of the Reserve Requirement; provided that the Surety Bond meets the requirements for "Qualified Insurance." There may be more than one Surety Bond.

Surety Bond Agreement means any Agreement between the City and the Surety Bond Issuer with respect to the Surety Bond.

Surety Bond Issuer means the surety bond issuer(s), if any, issuing a surety bond for the purpose of satisfying all or a portion of the Reserve Requirement. There may be more than one Surety Bond Issuer.

System means the sanitary sewage collection and treatment system of the City, including facilities for the collection and disposal of storm water runoff, as it now exists and as it may later be added to, extended and improved, and the existing water supply and distribution system of the City, including the interest of the City in the water supply facilities constructed by Public Utility District No. 1 of Snohomish County pursuant to the Sultan River Project Agreement, as it now exists and as it may later be added to, extended and improved, for as long as Parity Bonds remain outstanding.

2009 Bond Ordinance means Ordinance No. 3123-09 adopted by the Council on April 15, 2009.

2009 Bonds mean the City's outstanding Water and Sewer Revenue and Refunding Bonds, 2009, issued under date of May 13, 2009, pursuant to Ordinance No. 3123-09.

2009 Refunding Bond Candidates means all or a portion of the 2009 Bonds maturing on and after December 1, 2019.

2011 Bond Ordinance means Ordinance No. 3211-11 adopted by the Council on March 2, 2011.

2011 Bonds mean the City's outstanding Water and Sewer Revenue Bonds, 2011, issued under date of March 20, 2011, pursuant to Ordinance No. 3211-11.

2011 Refunding Bond Candidates means all or a portion of the 2011 Bonds maturing on and after December 1, 2021.

2013 Bonds mean the City's outstanding Water and Sewer Revenue Refunding Bonds, 2013, issued under date of February 14, 2013, pursuant to Ordinance No. 3313-13.

2015 Bonds mean the City's outstanding Water and Sewer Revenue Bonds, 2015, issued under date of November 3, 2015, pursuant to Ordinance No. 3450-15.

Tax Maximum means the maximum dollar amount permitted by the Internal Revenue Code of 1986, as amended, including applicable regulations thereunder, to be allocated to a bond reserve account from bond proceeds without requiring a balance to be invested at a restricted yield.

ULID means a utility local improvement district of the City.

ULID Assessments means the assessments levied in all ULIDs, the assessments in which are payable into the Revenue Bond Fund, and shall include installments thereof and interest and any penalties thereon.

Rules of Interpretation. In this ordinance, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein, "hereunder" and any similar terms, as used in this ordinance, refer to this ordinance as a whole and not to any particular article, section, subdivision or clause hereof, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this ordinance;

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of the several articles and Sections of this ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect; and

(e) All references herein to "articles," "sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof.

Section 2. Compliance with Parity Conditions The Council hereby finds and determines, as required by Section 10 of Ordinance No. 3123-09, Section 10 of Ordinance No. 3211-11, Section 9 of Ordinance No. 3313-13 and Section 10 of Ordinance No. 3450-15, as follows:

(1) That the Bonds are being issued for the purpose of refunding Outstanding Parity Bonds payable out of the Revenue of the System;

(2) The City has not been in default of its Rate Covenant for the immediately preceding fiscal year, without regard to transfers from the Coverage Stabilization Account;

(3) This ordinance, in Section 8(b), contains a covenant that the City will at all times establish, maintain and collect rates and charges in the operation of all of its business sufficient to meet the Rate Covenant.

(4) The Bonds being issued are for the purpose of refunding outstanding Parity Bonds.

The applicable parity conditions set forth in Ordinance Nos. 3123-09, 3211-11, 3313-13 and 3450-15 having been complied with, the Bonds shall be issued on a parity of lien with the Outstanding Parity Bonds.

Section 3. Authorization of Bonds and Bond Details.

(a) *Bonds.* For the purpose of refunding the Refunded Bonds, funding the Reserve Requirement or purchasing a Surety Bond as Qualified Insurance to meet the Reserve Requirement and paying the costs of issuance related thereto, the City shall issue its water and sewer revenue refunding bonds (the "Bonds").

(b) *Bond Details.* The Bonds shall be designated as the City of Everett, Washington, Water and Sewer Revenue Refunding Bonds, 2016, shall be dated as of their date of delivery; shall be fully registered as to both principal and interest; shall be in the denomination of $5,000 each, or any integral multiple thereof, provided that no Bond shall represent more than one maturity; shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification; and shall bear interest from their date payable on the first days of each June and December, commencing on June 1, 2017 at rates set forth in the Approved Bid; and shall mature on the dates and in the principal amounts set forth in the Approved Bid and as approved by the Chief Financial Officer pursuant to Section 15. The Bonds of any of the maturities may be combined and issued as term bonds, subject to mandatory redemption as provided in the Notice of Sale for the Bonds and the Approved Bid.

The Bonds shall be obligations only of the Revenue Bond Fund and shall be payable and secured as provided herein. The Bonds shall not be general obligations of the City.

Section 4. Registration, Exchange and Payments.

(a) *Registrar/Bond Register.* The City hereby specifies and adopts the system of registration approved by the Washington State Finance Committee from time to time through the appointment of state fiscal agencies. The City shall cause a bond register to be maintained by the Registrar. So long as any Bonds remain outstanding, the Registrar shall make all necessary provisions to permit the exchange or registration or transfer of Bonds at its principal corporate trust office. The Registrar may be removed at any time at the option of the Designated Representative upon prior notice to the Registrar and a successor Registrar appointed by the Designated Representative. No resignation or removal of the Registrar shall be effective until a successor shall have been appointed and until the successor Registrar shall have accepted the duties of the Registrar hereunder. The Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of such Bonds and this ordinance and to carry out all of the Registrar's powers and duties under this ordinance. The Registrar shall be responsible for its representations contained in the Certificate of Authentication of the Bonds.

(b) *Registered Ownership.* The City and the Registrar, each in its discretion, may deem and treat the Registered Owner of each Bond as the absolute owner thereof for all purposes (except as provided in Section 17 of this ordinance), and neither the City nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 4(h) hereof, but such Bond may be transferred as herein provided. All such payments made as described in Section 4(h) shall be valid and shall satisfy and discharge the liability of the City upon such Bond to the extent of the amount or amounts so paid.

(c) *DTC Acceptance/Letters of Representations.* The Bonds initially shall be held in fully immobilized form by DTC acting as depository. To induce DTC to accept the Bonds as eligible for deposit at DTC, the City has executed and delivered to DTC a Blanket Issuer Letter of Representations. Neither the City nor the Registrar will have any responsibility or obligation to DTC participants or the persons for whom they act as nominees (or any successor depository) with respect to the Bonds in respect of the accuracy of any records maintained by DTC (or any successor depository) or any DTC participant, the payment by DTC (or any successor depository) or any DTC participant of any amount in respect of the principal of or interest on Bonds, any notice which is permitted or required to be given to Registered Owners under this ordinance (except such notices as shall be required to be given by the City to the Registrar or to DTC (or any successor depository)), or any consent given or other action taken by DTC (or any successor depository) as the Registered Owner. For so long as any Bonds are held in fully-immobilized form hereunder, DTC or its successor depository shall be deemed to be the Registered Owner for all purposes hereunder, and all references herein to the Registered Owners shall mean DTC (or any successor depository) or its nominee and shall not mean the owners of any beneficial interest in such Bonds.

If any Bond shall be duly presented for payment and funds have not been duly provided by the City on such applicable date, then interest shall continue to accrue thereafter on the unpaid principal thereof at the rate stated on such Bond until it is paid.

(d) *Use of Depository.*

(1) The Bonds shall be registered initially in the name of "Cede & Co.", as nominee of DTC, with one Bond maturing on each of the maturity dates for the Bonds in a denomination corresponding to the total principal therein designated to mature on such date.

Registered ownership of such immobilized Bonds, or any portions thereof, may not thereafter be transferred except (A) to any successor of DTC or its nominee, provided that any such successor shall be qualified under any applicable laws to provide the service proposed to be provided by it; (B) to any substitute depository appointed by the Designated Representative pursuant to subsection (2) below or such substitute depository's successor; or (C) to any person as provided in subsection (4) below.

(2) Upon the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository or a determination by the Designated Representative to discontinue the system of book entry transfers through DTC or its successor (or any substitute depository or its successor), the Designated Representative may hereafter appoint a substitute depository. Any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it.

(3) In the case of any transfer pursuant to clause (A) or (B) of subsection (1) above, the Registrar shall, upon receipt of all outstanding Bonds, together with a written request of the Designated Representative, issue a single new Bond for each maturity then outstanding, registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such written request of the Designated Representative.

(4) In the event that (A) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained, or (B) the Designated Representative determines that it is in the best interest of the beneficial owners of the Bonds that such owners be able to obtain such bonds in the form of Bond certificates, the ownership of such Bonds may then be transferred to any person or entity as herein provided, and shall no longer be held in fully-immobilized form. The Designated

Representative shall deliver a written request to the Registrar, together with a supply of definitive Bonds, to issue Bonds as herein provided in any authorized denomination. Upon receipt by the Registrar of all then outstanding Bonds together with a written request of the Designated Representative to the Registrar, new Bonds shall be issued in the appropriate denominations and registered in the names of such persons as are requested in such written request.

(e) *Registration of Transfer of Ownership or Exchange; Change in Denominations.* The transfer of any Bond may be registered and Bonds may be exchanged, but no transfer of any such Bond shall be valid unless it is surrendered to the Registrar with the assignment form appearing on such Bond duly executed by the Registered Owner or such Registered Owner's duly authorized agent in a manner satisfactory to the Registrar. Upon such surrender, the Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Registered Owner or transferee therefor, a new Bond (or Bonds at the option of the new Registered Owner) of the same date, maturity and interest rate and for the same aggregate principal amount in any authorized denomination, naming as Registered Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond. Any Bond may be surrendered to the Registrar and exchanged, without charge, for an equal aggregate principal amount of Bonds of the same date, maturity and interest rate, in any authorized denomination. The Registrar shall not be obligated to register the transfer or to exchange any Bond during the 15 days preceding any interest payment or principal payment date any such Bond is to be redeemed.

(f) *Registrar's Ownership of Bonds.* The Registrar may become the Registered Owner of any Bond with the same rights it would have if it were not the Registrar, and to the

extent permitted by law, may act as depository for and permit any of its officers or directors to act as member of, or in any other capacity with respect to, any committee formed to protect the right of the Registered Owners of Bonds.

(g) *Registration Covenant.* The City covenants that, until all Bonds have been surrendered and canceled, it will maintain a system for recording the ownership of each Bond that complies with the provisions of Section 149 of the Code.

(h) *Place and Medium of Payment.* Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be calculated on the basis of a year of 360 days and twelve 30-day months. For so long as all Bonds are in fully immobilized form, payments of principal and interest thereon shall be made as provided in accordance with the operational arrangements of DTC referred to in the Letter of Representations. In the event that the Bonds are no longer in fully immobilized form, interest on the Bonds shall be paid by check or draft mailed to the Registered Owners at the addresses for such Registered Owners appearing on the Bond Register on the fifteenth day of the month preceding the interest payment date, or upon the written request of a Registered Owner of more than $1,000,000 of Bonds (received by the Registrar at least 15 days prior to the applicable payment date), such payment shall be made by the Registrar by wire transfer to the account within the continental United States designated by the Registered Owner. Principal of the Bonds shall be payable upon presentation and surrender of such Bonds by the Registered Owners at the principal office of the Registrar.

Section 5. Redemption; Purchase of Bonds.

(a) *Optional Redemption.* The Bonds may be subject to optional redemption on the dates, at the prices and under the terms set forth in the Notice of Sale approved by the Chief Financial Officer pursuant to Section 15 of this ordinance.

(b) *Mandatory Redemption.* The Bonds may be subject to mandatory redemption to the extent, if any, set forth in the Approved Bid and as approved by the Chief Financial Officer pursuant to Section 15 of this ordinance.

(c) *Purchase of Bonds for Retirement.* The City further reserves the right to use at any time any surplus Revenue of the System available after providing for the payments required by paragraphs First, through Sixth of Section 6(b) of this ordinance, or other available funds, to purchase any of the Bonds that are offered to the City at any price deemed appropriate by the City. Any purchase of Bonds may be made with or without tender of Bonds and at either public or private sale.

(d) *Effect of Purchase.* To the extent that the City shall have purchased any term bonds or Balloon Maturity Bonds since the last scheduled mandatory redemption of such term bonds, the City may reduce the principal amount of the term bonds or Balloon Maturity Bonds to be redeemed in like principal amount. Such reduction may be applied in the year specified by the Designated Representative.

(e) *Selection of Bonds for Redemption.* If Bonds are called for optional redemption, the maturities of Bonds to be redeemed shall be selected by the City. If any Bonds to be redeemed (optional or mandatory) then are held in book-entry-only form, the selection of Bonds to be redeemed within a maturity shall be made in accordance with the operational arrangements then in effect at DTC. If the Bonds to be redeemed are no longer held in book-entry-only form,

the selection of such Bonds to be redeemed shall be made in the following manner. If the City redeems at any one time fewer than all of the Bonds having the same maturity date, the particular Bonds or portions of Bonds and maturity to be redeemed shall be selected by lot utilizing a random selection process reasonably determined by the Registrar) in increments of $5,000. In the case of a Bond of maturity in a denomination greater than $5,000, the City and Registrar shall treat each Bond of that maturity as representing such number of separate Bonds each of the denomination of $5,000 as is obtained by dividing the actual principal amount of such Bond of that maturity by $5,000. In the event that only a portion of the principal sum of a Bond is redeemed, upon surrender of such Bond at the principal office of the Registrar there shall be issued to the Registered Owner, without charge therefor, for the then-unredeemed balance of the principal sum thereof a Bond or, at the option of the Registered Owner, Bonds of like maturity and interest rate in any of the denominations herein authorized.

(f) *Notice of Redemption.* Written notice of any redemption of Bonds prior to maturity, which notice may be conditional, shall be given by the Registrar on behalf of the City by first class mail, postage prepaid, not less than 20 days nor more than 60 days before the date fixed for redemption to the Registered Owners of Bonds that are to be redeemed at their last addresses shown on the Bond Register. This requirement shall be deemed complied with when notice is mailed to the Registered Owners at their last addresses shown on the Bond Register, whether or not such notice is actually received by the Registered Owners.

So long as the Bonds are in book-entry only form, notice of redemption shall be given to Beneficial Owners of Bonds to be redeemed in accordance with the operational arrangements then in effect at DTC, and neither the City nor the Registrar shall be obligated or responsible to confirm that any notice of redemption is, in fact, provided to Beneficial Owners.

Each notice of redemption prepared and given by the Registrar to Registered Owners of Bonds shall contain the following information: (1) the proposed redemption date, (2) the redemption price, (3) if fewer than all outstanding Bonds are to be redeemed, the identification by maturity (and, in the case of partial redemption, the principal amounts) of the Bonds to be redeemed, (4) that (unless the notice of redemption is a conditional notice, in which case the notice shall state that interest shall cease to accrue from the date fixed for redemption if and to the extent that funds have been provided to the Registrar for the redemption of Bonds) on the date fixed for redemption the redemption price will become due and payable upon each Bond or portion called for redemption, and that interest shall cease to accrue from the date fixed for redemption, (5) that the Bonds are to be surrendered for payment at the principal office of the Registrar, (6) the CUSIP numbers of all Bonds being redeemed, (7) the dated date of the Bonds being redeemed, (8) the rate of interest for each Bond being redeemed, (9) the date of the notice, and (10) any other information deemed necessary by the Registrar to identify the Bonds being redeemed.

Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

(g) *Effect of Redemption.* Unless the City has revoked a notice of redemption (or unless the City provided a conditional notice and the conditions for redemption set forth therein are not satisfied), the City shall transfer to the Registrar amounts that, in addition to other money, if any, held by the Registrar for such purpose, will be sufficient to redeem, on the date fixed for redemption, all the Bonds to be redeemed. If and to the extent that funds have been provided to the Registrar for the redemption of Bonds then such Bonds shall become due and payable on the

date fixed for redemption and interest on such Bond shall cease to accrue from and after such date.

(h) *Amendment of Notice Provisions.* The foregoing notice provisions of this section, including but not limited to the information to be included in redemption notices and the persons designated to receive notices, may be amended by additions, deletions and changes to maintain compliance with duly promulgated regulations and recommendations regarding notices of redemption of municipal securities.

Section 6. Revenue Fund; Priority of Payments from Revenue Fund; Coverage Stabilization Account.

(a) *Revenue Fund.* A special fund of the City known as "Fund 401 Public Works – Utilities Fund, including subaccounts therein (the "Revenue Fund") has heretofore been established in the office of the Designated Representative into which shall be deposited the Revenue of the System as collected, except the interest earned and income derived from investments of money in the Revenue Bond Fund and the accounts therein. The Revenue Fund shall be held separate and apart from all other funds and accounts of the City.

(b) *Priority of Payments from the Revenue Fund.* The Revenue of the System deposited in the Revenue Fund shall be used only for the following purposes and in the following order of priority:

First, to pay the Costs of Maintenance and Operation;

Second, to make all payments required to be made into the Debt Service Account to pay the interest on any Parity Bonds, including reimbursements to the issuer of a Credit Facility if the Credit Facility secures the payment of interest on Parity Bonds and the ordinance authorizing such Parity Bonds provides for such reimbursement;

Third, to make all payments required to be made into the Debt Service Account to pay the principal of any Parity Bonds, including reimbursements to the issuer of a Credit Facility if the Credit Facility secures the payment of principal of Parity Bonds and the ordinance authorizing such Parity Bonds provides for such reimbursement;

Fourth, to make all payments required to be made into any sinking fund account hereafter created to provide for the payment of the principal of term bonds or Balloon Maturity Bonds;

Fifth, to make all payments required to be made into the Reserve Account for Covered Bonds and to any reserve account created in the future for the payment of debt service on Future Parity Bonds, including reimbursements to the issuer of a Qualified Letter of Credit or Qualified Insurance if the Qualified Letter of Credit or Qualified Insurance has been issued to fund the Reserve Requirement and/or the reserve requirement(s) for any Future Parity Bonds and the ordinance authorizing such Parity Bonds provides for such reimbursement;

Sixth, to make all payments required to be made into any revenue debt redemption fund, debt service account, reserve account or sinking fund account created to pay and secure the payment of the principal of and interest on Government Loans and any revenue bonds, or revenue warrants or other revenue obligations of the City having a lien upon the Revenue of the System junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds; and

Seventh, to retire by redemption or purchase any outstanding water and sewer revenue bonds or revenue warrants of the City, to make necessary additions, betterments, improvements and repairs to or extensions and replacements of the System, or for any other lawful City purposes.

The City may transfer any money from any funds or accounts of the System legally available therefor, except bond redemption funds, refunding escrow funds or defeasance funds, to meet the required payments to be made into the Revenue Bond Fund. Money in the Revenue Fund may be invested by the City in any investment that is a legal investment for the City.

(c) *Coverage Stabilization Account.* The Chief Financial Officer is hereby authorized to create a Coverage Stabilization Account within the Revenue Fund at the option of the Chief Financial Officer. The City hereby determines that the maintenance of a Coverage Stabilization Account will moderate fluctuations in Net Revenues and help to alleviate the need for short-term rate adjustments. Money in the Coverage Stabilization Account will be transferred as determined from time to time by the City. The City may make payments into the Coverage Stabilization Account from the Revenue Fund at any time. Money in the Coverage Stabilization Account may be withdrawn at any time and used for the purpose for which the Revenue of the System may be used. Amounts withdrawn from the Coverage Stabilization Account shall increase Revenue of the System for the period in which they are withdrawn, and amounts deposited in the Coverage Stabilization Account shall reduce Revenue of the System for the period during which they are deposited for purposes of measuring compliance with the Rate Covenant. Credits to or from the Coverage Stabilization Account that occur within 90 days after the end of a fiscal year may be treated as occurring within such fiscal year. Earnings on the Coverage Stabilization Account shall be credited to the Revenue Fund.

Section 7. Payments into Revenue Bond Fund. A special account of the City known as the "Fund 401 – Public Works-Utilities – Bond Redemption Subaccount" (the "Revenue Bond Fund") has been created in the office of the Chief Financial Officer for the sole purpose of

paying and securing the payment of Parity Bonds. The City hereby irrevocably covenants and agrees to pay the ULID Assessments into the Revenue Bond Fund.

(a) *Payments into Revenue Bond Fund.* As long as the Bonds remain outstanding, the City hereby irrevocably obligates and binds itself to set aside and pay from the Revenue Fund into the Revenue Bond Fund on or before the date due those amounts necessary, together with ULID Assessments deposited and such other money as is on hand and available therefor in the Revenue Bond Fund, to pay the interest or principal and interest next coming due on the Bonds.

Notwithstanding anything in Section 7(d) hereof to the contrary, money in the Revenue Bond Fund may be used to pay any arbitrage rebate, if any, to the extent the rebate is attributable to earnings on money in the Revenue Bond Fund.

(b) *Payments into Reserve Account.*

(1) Establishment. The City hereby agrees that a special account to be known as the "Fund 401 – Public Works Utilities – restricted subaccount for bond reserves" (the "Reserve Account") shall be maintained for the purpose of securing the payment of the principal of and interest on all Covered Bonds.

The Designated Representative may decide to utilize a Surety Bond to satisfy all or a portion of the Reserve Requirement; provided that the Surety Bond meets the qualifications for Qualified Insurance. Upon such election, the Designated Representative is hereby authorized to execute and deliver a Surety Bond Agreement with a Surety Bond Issuer to effect the delivery of the Surety Bond. Any moneys released from the Reserve Account as a result of the acquisition of a Surety Bond shall be used by the City for capital improvements to the System.

(2) Maintenance of Reserve Requirement. The Reserve Account shall be maintained for the purpose of securing the payment of the principal of and interest on all

Covered Bonds. The Bonds shall be Covered Bonds, secured by the Reserve Account. The City hereby covenants that the Reserve Requirement for the Bonds will be fully funded as of the date of issuance of the Bonds, either with cash, Bond proceeds or Qualified Insurance. The City covenants and agrees that from and after the closing and delivery of the Bonds, it will at all times, subject to the foregoing funding requirements, maintain an amount in the Reserve Account at least equal to the Reserve Requirement except for withdrawals therefrom authorized hereinafter, at all times for so long as any Covered Bonds remain outstanding. The Reserve Requirement may be maintained by deposits of cash, a Qualified Letter of Credit or Qualified Insurance, or a combination of the foregoing. In computing the amount on hand in the Reserve Account, Qualified Insurance and/or a Qualified Letter of Credit shall be valued at the face amount thereof, and all other obligations purchased as an investment of moneys therein shall be valued at cost. As used herein, the term "cash" shall include U.S. currency, cash equivalents and evidences thereof, including demand deposits, certified or cashier's check; and the deposit to the Reserve Account may be satisfied initially by the transfer of qualified investments to such account.

Any Qualified Insurance shall not be cancelable on less than 30 days' notice to the City. In the event of any cancellation or termination of a Qualified Insurance or a Qualified Letter of Credit, the Reserve Account shall be funded as if the Covered Bonds that remain outstanding had been issued on the date of such notice of cancellation.

In the event that the City elects to meet the Reserve Requirement through the use of a Qualified Letter of Credit, Qualified Insurance or other equivalent credit enhancement device, the City may contract with the entity providing such Qualified Letter of Credit, Qualified Insurance or other equivalent credit enhancement device that the City's reimbursement

obligation, if any, to such entity shall be made from payments of principal and interest on Covered Bonds from the City subject only to the prior lien thereon for the payments required hereunder to be made to registered owners of Parity Bonds.

(3) Withdrawals From Reserve Account. If the balances on hand in the Reserve Account are sufficient to satisfy the Reserve Requirement, interest earnings shall be applied as provided in the following sentences. Whenever there is a sufficient amount in the Revenue Bond Fund, including the Reserve Account to pay the principal of and interest on all outstanding Covered Bonds, the money in the Reserve Account may be used to pay such principal and interest. As long as the money left remaining on deposit in the Reserve Account is equal to the Reserve Requirement, money in the Reserve Account may be transferred to the Revenue Bond Fund and used to pay the principal of and interest on Covered Bonds as the same becomes due and payable. The City also may transfer out of the Reserve Account any money required in order to prevent any Parity Bonds from becoming "arbitrage bonds" under the Code.

If a deficiency in the Revenue Bond Fund for the payment of debt service on Covered Bonds shall occur, such deficiency shall be made up from the Reserve Account by the withdrawal of cash therefrom for that purpose and by the sale or redemption of obligations held in the Reserve Account, in such amounts as will provide cash in the Reserve Account sufficient to make up any such deficiency with respect to Covered Bonds, and if a deficiency still exists immediately prior to an interest payment date and after the withdrawal of cash, the City shall then draw from any Qualified Letter of Credit or Qualified Insurance for Covered Bonds in sufficient amount to make up the deficiency. Such draw shall be made at such times and under such conditions as the agreement for such Qualified Letter of Credit or such Qualified Insurance shall provide.

(4) Replenishment. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up within one year of the date of withdrawal from Net Revenues or from ULID Assessments (or out of any other moneys on hand legally available for such purpose) after making necessary provision for the payments required to be made by subparagraphs First through Fourth, inclusive, of Section 6(b) of this ordinance or may be made up with a policy or policies of Qualified Insurance or a Qualified Letter of Credit as provided above.

(5) Future Parity Bonds. In the event the City issues any Future Parity Bonds that are Covered Bonds, the City will provide in the ordinance authorizing the issuance of the same for payment into the Reserve Account out of proceeds of such Future Parity Bonds, Revenue of the System or ULID Assessments (or, at the option of the City, out of any other funds on hand and legally available therefor) approximately equal additional annual installments so that by five years from the date of issuance of such Future Parity Bonds there will have been paid into the Reserve Account an amount that, together with the money already on deposit therein, will be at least equal to the Reserve Requirement. Such annual payments into the Reserve Account shall be made not later than December 20 of each year.

(c) *Priority of Lien of Payments into Revenue Bond Fund.* The amounts so pledged to be paid into the Revenue Bond Fund from the Revenue Fund are hereby declared to be a lien and charge upon the Revenue of the System junior in lien to the Costs of Maintenance and Operation and equal to the lien of the charges upon such Revenue of the System and ULID Assessments that have heretofore been made to pay and secure the payment of the principal of and interest on the Outstanding Parity Bonds and which may hereafter be made upon the Revenue of the System and ULID Assessments to pay and secure the payment of the principal of

and interest on any Future Parity Bonds, and prior and superior to all other charges of any kind or nature whatsoever.

(d) *Application and Investment of Money in Revenue Bond Fund.* Money in the Revenue Bond Fund and the Reserve Account shall be invested in any legal investment for City funds. Investments in the Revenue Bond Fund shall mature prior to the date on which such money shall be needed for required interest or principal payments. Investments in any Reserve Account shall mature not later than the last maturity of the Parity Bonds secured thereby. All interest earned and income derived by virtue of such investments shall remain in the Revenue Bond Fund and be used to meet the required deposits into any account therein.

(e) *Sufficiency of Revenues.* The Council hereby finds and declares that in fixing the amounts to be paid into the Revenue Bond Fund out of the Revenue of the System, it has exercised due regard for the Costs of Maintenance and Operation and has not obligated the City to set aside and pay into such Fund a greater amount of such Revenue than in its judgment will be available over and above the Costs of Maintenance and Operation.

(f) *Surety Bond Agreement.* The Designated Representative may solicit bids from surety bond issuers, and the Designated Representative is hereby authorized to select a proposal and to execute the Surety Bond Agreement(s), which may include such covenants and conditions as shall be approved by the Designated Representative.

Section 8. Bond Covenants.

(a) *Maintenance and Operation.* The City shall at all times maintain, preserve and keep the properties of the System in good repair, working order and condition and will from time to time make all necessary and proper repairs, renewals, replacements, extensions and betterments thereto, so that at all times the business carried on in connection therewith will be

properly and advantageously conducted, and the City will at all times operate or cause to be operated said properties of the System and the business in connection therewith in an efficient manner and at a reasonable cost.

(b) *Rate Covenant.* The City will establish, maintain and collect such rates and charges for service of its System for so long as any Parity Bonds are outstanding as will maintain the Rate Covenant.

(c) *Payment of Costs of Maintenance and Operation.* After making or providing for the payments from the Revenue Fund as required by Section 6(b) hereof, there shall be maintained in the Revenue Fund sufficient money to enable the City to meet the Costs of Maintenance and Operation of the System on a current basis.

(d) *Sale or Disposition of the System.* The City will not sell or otherwise dispose of the System in its entirety unless simultaneously with such sale or other disposition, provision is made for the payment into the Revenue Bond Fund of cash or Government Obligations sufficient together with interest to be earned thereon to pay the principal of and interest on the then Outstanding Parity Bonds, nor will it sell or otherwise dispose of any part of the useful operating properties of the System unless such facilities are replaced or provision is made for payment into the Revenue Bond Fund of the greatest of the following:

(1) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Revenue Bond Fund and accounts therein) that the Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Net Revenue for such period; or

(2) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (as defined above) that the Net Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Net Revenue for such period; or

(3) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (as defined above) that the depreciated cost value of the facilities sold or disposed of bears to the depreciated cost value of the entire System immediately prior to such sale or disposition.

The proceeds of any such sale or disposition of a portion of the properties of the System (to the extent required above) shall be paid into the Revenue Bond Fund.

Notwithstanding any other provision of this subsection (d), the City may sell or otherwise dispose of any of the works, plant, properties and facilities of the System or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary, material to or useful in such operation, without making any deposit into the Revenue Bond Fund.

(e) *Liens or Encumbrances.* The City will not at any time create or permit to accrue or to exist any lien or other encumbrance or indebtedness upon the System or the Revenue of the System, or any part thereof, prior or superior to the lien thereon for the payment of the Parity Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the Revenue of the System, or any part thereof, or upon any funds in the hands of the City, prior to or superior to the lien of the Parity Bonds, or which might impair the security of the Parity Bonds.

(f) *Insurance*. The City will keep the works, plants and facilities comprising the System insured, and will carry such other insurance, with responsible insurers, with policies payable to the City, against risks, accidents or casualties, at least to the extent that insurance is usually carried by private corporations operating like properties, or will implement a self-insurance program with reserves adequate, in the judgment of the Council, to protect the City and the holders of Parity Bonds against loss. In the event of any loss or damage, the City will promptly repair or replace the damaged portion of the insured property and apply the proceeds of any insurance policy for that purpose; or in the event the City should determine not to repair or reconstruct such damaged portion of the properties of the System, the proceeds of such insurance shall be paid into any Reserve Account to the extent that such transfer shall be necessary to make up any deficiency in said Reserve Account and the balance, if any, shall, at the option of the City, be used either for repairs, renewals, replacements, or capital additions to the System, for the redemption of Parity Bonds, or for deposit into the Revenue Bond Fund.

(g) *Books and Accounts*. The City shall keep proper books of account in accordance with any applicable rules and regulations prescribed by the State of Washington. The City shall prepare, and any owner or holder of Parity Bonds may, upon written request, obtain copies of, balance sheets and profit and loss statements showing in reasonable detail the financial condition of the System as of the close of each year, and the income and expenses of such year, including the amounts paid into the Revenue Fund, the Revenue Bond Fund, and into any and all special funds or accounts created pursuant to the provisions of this ordinance, and the amounts expended for maintenance, renewals, replacements, and capital additions to the System.

(h) *No Free Service*. The City will not furnish or supply or permit the furnishing or supplying of any commodity, service or facility furnished by or in connection with the operation

of the System, free of charge to any person, firm or corporation, public or private, so long as any Bonds are outstanding and unpaid.

(i) *Additions and Improvements.* The City will not expend any of the revenues derived by it from the operation of the System or the proceeds of any indebtedness payable from the Revenue of the System for any extensions, betterments or improvements to the System that are not legally required or economically sound, and that will not properly and advantageously contribute to the conduct of the business of the System in an efficient manner.

(j) *Collection of Delinquent Accounts.* The City will, on or before April 1 of each calendar year, determine all accounts that are delinquent and will take all necessary action to enforce payment of such accounts including real property foreclosure actions pursuant to RCW Chapter 35.67, as amended, or its successor statute, if any, against those property owners whose accounts are delinquent.

(k) *Collection and Application of ULID Assessments.* All ULID Assessments shall be paid into the Revenue Bond Fund and shall be used to pay and secure the payment of the principal of and interest on the Parity Bonds. Nothing in this ordinance or this section shall be construed to prohibit the City from issuing water, sewer or water and sewer revenue bonds junior in lien to the Bonds and pledging as security for their payment assessments levied in any ULID which may have been specifically created to pay part of the cost of improvements to the System for which those junior lien bonds were specifically issued.

(l) *Collection of Delinquent ULID Assessments.* The City will, on or before April 1 of each calendar year, determine all ULID Assessments or installments thereof that are delinquent and will take all necessary action to enforce payment of such ULID Assessments,

including real property foreclosure actions pursuant to RCW Chapter 35.50, as amended, or its successor statute, if any, against the property owners whose ULID Assessments are delinquent.

Section 9. Issuance of Future Parity Bonds.

(a) *Conditions to the issuance of Future Parity Bonds.* As long as any of Parity Bonds remain outstanding, the City hereby further covenants and agrees that it will not issue any Future Parity Bonds except that the City hereby reserves the right to issue additional water and sewer revenue bonds, which shall constitute a charge and lien upon the Revenue of the System equal to the lien thereon of the Bonds. Except as provided in subsection (b) below, the City shall not issue any series of Future Parity Bonds or incur any additional indebtedness with a parity lien or charge on Net Revenues (*i.e.*, on a parity of lien with Parity Bonds at the time outstanding) unless:

(1) the City shall not have been in default of its Rate Covenant for the immediately preceding fiscal year, without regard to transfers from the Coverage Stabilization Account;

(2) The ordinance authorizing the issuance of such Future Parity Bonds shall include the covenants provided in Section 8(b) hereof; and

(3) there shall have been filed a certificate (prepared as described in subsection (c) or (d) below) demonstrating fulfillment of the Parity Requirement, commencing with the first full fiscal year following the date on which any portion of interest on the series of Future Parity Bonds then being issued no longer will be paid from the proceeds of such series of Future Parity Bonds.

(b) *No Certificate Required.* The certificate described in the foregoing subsection (a)(3) shall not be required as a condition to the issuance of Future Parity Bonds:

(1) if the Future Parity Bonds being issued are for the purpose of refunding Outstanding Parity Bonds; or

(2) if the Future Parity Bonds are being issued to pay costs of construction of facilities of the System for which Future Parity Bonds have been issued previously and the principal amount of such Future Parity Bonds being issued for completion purposes does not exceed an amount equal to an aggregate of 15% of the principal amount of Future Parity Bonds theretofore issued for such facilities and reasonably allocable to the facilities to be completed as shown in a written certificate of the Chief Financial Officer, and there is delivered a Designated Representative's certificate stating that the nature and purpose of such facilities has not materially changed.

(c) *Certificate of the City Without A Consultant.* If required pursuant to the foregoing subsection (a)(3), a certificate may be delivered by the City (executed by the Chief Financial Officer) without a Consultant if Net Revenues for the Base Period (confirmed by an audit) conclusively demonstrate that the Parity Requirement will be fulfilled commencing with the first full fiscal year following the date on which any portion of interest on the series of Future Parity Bonds then being issued will not be paid from the proceeds of such series of Future Parity Bonds.

(d) *Certificate of a Consultant.* Unless compliance with the requirements of subsection (a)(3) have been otherwise satisfied (as provided in (b) or (c) above), compliance with the Parity Requirement shall be demonstrated conclusively by a certificate of a Consultant.

In making the computations of Net Revenues for the purpose of certifying compliance with the Parity Requirement, the Consultant shall use as a basis the Net Revenues (which may be

based upon unaudited financial statements of the City if the audit has not yet been completed) for the Base Period. Such Net Revenues shall be determined by adding the following:

(1) The historical net revenue of the City for the Base Period being issued as determined by a Consultant.

(2) The net revenue derived from those customers of the City that have become customers during such 12-month period or thereafter and prior to the date of such certificate, adjusted to reflect a full year's net revenue from each such customer to the extent such net revenue was not included in (1) above.

(3) The estimated annual net revenue to be derived from any person, firm, association, private or municipal corporation under any executed contract for service, which net revenue was not included in any of the sources of net revenue described in this subsection (d).

(4) The estimated annual net revenue to be derived from the operation of any additions or improvements to or extensions of the City under construction but not completed at the time of such certificate and not being paid for out of the proceeds of sale of such Future Parity Bonds being issued, and which net revenue is not otherwise included in any of the sources of net revenue described in this subsection (d).

(5) The estimated annual net revenue to be derived from the operation of any additions and improvements to or extensions of the City being paid for out of the proceeds of sale of such Future Parity Bonds being issued.

In the event the City will not derive any revenue as a result of the construction of the additions, improvements or extensions being made or to be made to the System within the provisions of subparagraphs (4) and (5) immediately above, the estimated normal Costs of Maintenance and Operation (excluding any transfer of money to other funds of the City and

license fees, taxes and payments in lieu of taxes payable to the City) of such additions, improvements and extensions shall be deducted from estimated annual net revenue.

The words "historical net revenue" or "net revenue" as used in this subsection (d) shall mean the Revenue or any part or parts thereof less the normal expenses of maintenance and operation of the System or any part or parts thereof, but before depreciation.

Such "historical net revenue" or "net revenue" shall be adjusted to reflect the rates and charges effective on the date of such certificate if there has been any change in such rates and charges during or after such 12-consecutive-month period.

(e) *Junior Liens.* Nothing herein contained shall prevent the City from issuing revenue bonds or other obligations that are a charge upon the Revenue of the System junior or inferior to the payments required by this ordinance to be made out of such Revenue into the Revenue Bond Fund and accounts therein to pay and secure the payment of any Outstanding Parity Bonds.

(f) *Refunding to avoid default.* Nothing herein contained shall prevent the City from issuing revenue bonds to refund maturing Parity Bonds for the payment of which money is not otherwise available.

Section 10. Tax Covenants. The City covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exemption from federal income taxation of the interest on the Bonds and will take or require to be taken such acts as may reasonably be within its ability and as may from time to time be required under applicable law to continue the exemption from federal income taxation of the interest on the Bonds.

(a) *Arbitrage Covenant.* Without limiting the generality of the foregoing, the City covenants that it will not take any action or fail to take any action with respect to the proceeds of

sale of the Bonds or any other funds of the City which may be deemed to be proceeds of the Bonds pursuant to Section 148 of the Code and the regulations promulgated thereunder which, if such use had been reasonably expected on the dates of delivery of the Bonds to the initial purchasers thereof, would have caused the Bonds as "arbitrage bonds" within the meaning of such term as used in Section 148 of the Code.

The City represents that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is an issuer whose arbitrage certifications may not be relied upon. The City will comply with the requirements of Section 148 of the Code and the applicable regulations thereunder throughout the term of the Bonds.

(b) *Private Person Use Limitation for Bonds.* The City covenants that for as long as the Bonds are outstanding, it will not permit:

(1) More than 10% of the Net Proceeds of the Bonds to be used for any Private Person Use; and

(2) More than 10% of the principal or interest payments on the Bonds in a Bond Year to be directly or indirectly: (A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use.

The City further covenants that, if:

(3) More than five percent of the Net Proceeds of the Bonds are to be used for any Private Person Use; and

(4) More than five percent of the principal or interest payments on the Bonds in a Bond Year are (under the terms of this ordinance or any underlying arrangement) directly or indirectly:

(A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or

(B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use, then, (i) any Private Person Use of the projects financed or refinanced with the proceeds of the Bonds or Private Person Use payments described in subsection (4) hereof that is in excess of the five percent limitations described in such subsections (3) or (4) will be for a Private Person Use that is related to the state or local governmental use of the projects financed or refinanced with the proceeds of the Bonds, and (ii) any Private Person Use will not exceed the amount of Net Proceeds of the Bonds used for the state or local governmental use portion of the projects financed or refinanced with the proceeds of the Bonds to which the Private Person Use of such portion of the projects financed or refinanced with the proceeds of the Bonds relates. The City further covenants that it will comply with any limitations on the use of the projects by other than state and local governmental users that are necessary, in the opinion of its bond counsel, to preserve the tax exemption of the interest on the Bonds. The covenants of this section are specified solely to assure the continued exemption from regular income taxation of the interest on the Bonds.

(c) *No Designation under Section 265(b) of the Code.* The Bonds are not "qualified tax exempt obligations" for investment by financial institutions under Section 265(b) of the Code.

(d) *Modification of Tax Covenants.* The covenants of this section are specified solely to assure the continued exemption from regular income taxation of the interest on the Bonds. To that end, the provisions of this section may be modified or eliminated without any requirement for formal amendment thereof upon receipt of an opinion of the City's bond counsel that such modification or elimination will not adversely affect the tax exemption of interest on any Bonds.

Section 11. Form of Bonds. The Bonds shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. ____ $_____

STATE OF WASHINGTON

CITY OF EVERETT
WATER AND SEWER REVENUE REFUNDING BOND, 2016

Interest Rate: Maturity Date: CUSIP No.

Registered Owner: CEDE & Co.

Principal Amount: _____ AND NO/DOLLARS

THE CITY OF EVERETT, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington (the "City"), promises to pay to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, solely from the special fund of the City known as the "Fund 401 – Public Works-Utilities – Bond Redemption Subaccount" (the "Revenue Bond Fund") the Principal Amount indicated above and to pay interest thereon from the Revenue Bond Fund from _____, 2016, or the most recent date to which interest has been paid or duly provided for or until payment of this bond at the Interest Rate set forth above, payable on June 1, 2017, and semiannually thereafter on the first days of each June and December.

Both principal of and interest on this bond are payable in lawful money of the United States of America. For so long as the bonds of this issue are held in fully immobilized form, payments of principal and interest thereon shall be made as provided in accordance with the operational arrangements of The Depository Trust Company ("DTC") referred to in the Blanket Issuer Letter of Representations (the "Letter of Representations") from the City to DTC. The fiscal agency of the State of Washington has been appointed by the City as the authenticating agent, paying agent and registrar for the bonds of this issue (the "Registrar"). Capitalized terms used in this bond that are not specifically defined have the meanings given such terms in Ordinance No. ____ of the City (the "Bond Ordinance"). Reference is made to the Bond Ordinance and any and all modifications and amendments thereto for a description of the nature and extent of the security for the bonds of this issue, the funds or revenues pledged, and the terms and conditions upon which such bonds are issued.

This bond is one of an issue of $_____ of bonds of the City of like date, tenor and effect, except as to number, amount, rate of interest and date of maturity and is issued pursuant to the Bond Ordinance to refund certain outstanding water and sewer revenue bonds.

The bonds of this issue are subject to redemption prior to their stated maturity as stated in the Approved Bid for the Bonds.

The bonds of this issue are not general obligations of the City. The City hereby covenants and agrees with the owner and holder of this bond that it will keep and perform all the covenants of this bond and the Bond Ordinance.

The bonds of this issue are not "private activity bonds" as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code"). The bonds of this issue are not "qualified tax-exempt obligations" under Section 265(b) of the Code.

The City does hereby pledge and bind itself to set aside from the Revenue Fund out of the Revenue of the System and to pay into the Revenue Bond Fund and the Reserve Account the various amounts required by the Bond Ordinance to be paid into and maintained in such Fund and account, all within the times provided by the Bond Ordinance. To the extent more particularly provided by the Bond Ordinance, the amounts so pledged to be paid from the Revenue Fund out of the Revenue of the System into the Revenue Bond Fund and the account therein shall be a lien and charge thereon equal in rank to the lien and charge upon said revenue of the Outstanding Parity Bonds and the amounts required to pay and secure the payment of any revenue bonds of the City hereafter issued on a parity with Outstanding Parity Bonds and the bonds of this issue and superior to all other liens and charges of any kind or nature except the Costs of Maintenance and Operation of the System.

The City has further bound itself to maintain the System in good repair, working order and condition, to operate the same in an efficient manner and at a reasonable cost, and to establish, maintain and collect rates and charges for as long as any of the bonds of this issue are outstanding that will make available, for the payment of the principal thereof and interest thereon as the same shall become due, Net Revenue will be at least equal to the Rate Covenant, as described in the Bond Ordinance.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by or on behalf of the Registrar.

It is hereby certified and declared that this bond and the bonds of this issue are issued pursuant to and in strict compliance with the Constitution and laws of the State of Washington and ordinances of the City and that all acts, conditions and things required to be done precedent to and in the issuance of this bond have happened, been done and performed.

IN WITNESS WHEREOF, the City of Everett, Washington has caused this bond to be signed with the facsimile or manual signature of the Mayor, to be attested by the facsimile or manual signature of the City Clerk, and the corporate seal of the City to be reproduced hereon, all as of this ____ day of _____, 2016.

CITY OF EVERETT, WASHINGTON

By _____/s/ facsimile or manual_____
Mayor

(SEAL)

ATTEST:

_____/s/ facsimile or manual_____
City Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____, 2016

This bond is one of the bonds described in the within-mentioned Bond Ordinance and is one of the Water and Sewer Revenue Refunding Bonds, 2016 of the City of Everett, Washington, dated _____, 2016.

WASHINGTON STATE FISCAL AGENCY, Registrar

By _____
Authorized Signer

Section 12. Execution of Bonds. The Bonds shall be executed on behalf of the City with the manual or facsimile signature of the signature of the Mayor and attested by the manual

or facsimile signature of the City Clerk, and the seal of the City shall be impressed or a facsimile thereof imprinted or otherwise reproduced on the Bonds.

Only such Bonds as shall bear thereon a Certificate of Authentication in the form hereinbefore recited, manually executed by the Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this ordinance.

In case either of the officers who shall have executed the Bonds shall cease to be an officer or officers of the City before the Bonds so signed shall have been authenticated or delivered by the Registrar, or issued by the City, such Bonds may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. Any Bond may also be signed and attested on behalf of the City by such persons who are at the actual date of delivery of such Bond the proper officers of the City although at the original date of such Bond any such person shall not have been such officer of the City.

Section 13. Defeasance. In the event that the City, in order to effect the payment, retirement or redemption of any Bond, sets aside in the Revenue Bond Fund or in another special account, cash or noncallable Government Obligations, or any combination of cash and/or noncallable Government Obligations, in amounts and maturities which, together with the known earned income therefrom, are sufficient to redeem or pay and retire such Bond in accordance with its terms and to pay when due the interest and redemption premium, if any, thereon, and such cash and/or noncallable Government Obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the Revenue Bond Fund for the

payment of the principal of and interest on such Bond. The owner of a Bond so provided for shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive payment of principal, premium, if any, and interest from such special account, and such Bond shall be deemed to be not outstanding under this ordinance.

The Registrar shall provide notice of defeasance of Bonds to Registered Owners and to each party entitled to receive notice in accordance with Section 17 of this ordinance.

Section 14. Lost, Stolen or Destroyed Bonds. In case any Bond or Bonds shall be lost, stolen or destroyed, the Registrar may execute and deliver a new Bond or Bonds of like date, number and tenor to the Registered Owner thereof upon the Registered Owner's paying the expenses and charges of the City and the Registrar in connection therewith and upon his/her filing with the Chief Financial Officer and the Registrar evidence satisfactory to the Chief Financial Officer and the Registrar, respectively, that such Bond was actually lost, stolen or destroyed and of his/her ownership thereof, and upon furnishing the City and the Registrar with indemnity satisfactory to the Chief Financial Officer and the Registrar, respectively.

Section 15. Sale of Bonds.

(a) *Bond Sale.* The Bonds shall be sold at a competitive public sale. The Chief Financial Officer or her designee shall: (a) establish the date of the public sale; (b) establish the criteria by which the successful bidder will be determined; (c) request that a good faith deposit in an amount to be specified in the Notice of Sale accompany each bid; (d) cause notice of the public sale to be given (the "Notice of Sale"); and (e) provide for such other matters pertaining to the public sale as she deems necessary or desirable. The Chief Financial Officer shall cause notice of the public sale to be given and provide for such other matters pertaining to the public sale as she deems necessary or desirable.

Upon the date and time established for the receipt of bids for the Bonds, the Chief Financial Officer or her designee shall open the bids and shall cause the bids to be mathematically verified. The Bonds shall be sold to the bidder offering to purchase them at the lowest true interest cost to the City; *provided, however,* that the Chief Financial Officer reserves the right to reject any and all bids for the Bonds and also may waive any irregularity or informality in any bid

Subject to the terms and conditions set forth in this Section 15, the Chief Financial Officer is hereby authorized to approve the Refunded Bonds and accept an Approved Bid, upon her approval of the final interest rates, maturity dates, aggregate principal amounts, principal maturities and redemption rights set forth therein in accordance with the authority granted by this section so long as the aggregate principal amount of the Bonds does not exceed $82,500,000 and the Savings Target is met. Following the sale of the Bonds, the Chief Financial Officer shall provide a report to the Council, describing the final terms of the Bonds approved pursuant to the authority delegated in this section.

(b) *Delivery of Bonds; Documentation.* Upon the passage and approval of this ordinance, the proper officials of the City including the Chief Financial Officer, are authorized and directed to undertake all action necessary for the prompt execution and delivery of the Bonds to the successful bidder thereof and further to execute all closing certificates and documents required to effect the closing and delivery of the Bonds. In furtherance of the foregoing, the Chief Financial Officer is authorized to approve and enter into agreements for the payment of costs of issuance, including underwriter's discount, the fees and expenses specified in the Notice of Sale, including fees and expenses of underwriter and other retained services, including Bond Counsel, financial advisor, rating agencies, fiscal agency, escrow agent, verification agent, and

other expenses customarily incurred in connection with issuance and sale of bonds. The disbursement of Bond proceeds to pay certain costs of issuance shall be made by the Escrow Agent under the terms set forth in the Cost of Issuance Agreement.

(c) *Preliminary and Final Official Statements.* The Chief Financial Officer is hereby authorized to deem final the preliminary Official Statement relating to the Bonds for the purposes of the Rule. The Chief Financial Officer is further authorized to ratify and to approve for purposes of the Rule, on behalf of the City, the Official Statement relating to the issuance and sale of the Bonds and the distribution of the Official Statement pursuant thereto with such changes, if any, as may be deemed by her to be appropriate.

Section 16. Disposition of Bond Proceeds; Refunding Plan and Procedures.

(a) *Reserve Account.* The portion of the Bonds, if any, designated by the Chief Financial Officer shall be deposited into the Reserve Account which shall be, together with the balance therein, sufficient to meet the Reserve Requirement. In the alternative, the portion of Bond proceeds, if any, designated by the Chief Financial Officer may be used to pay all or a portion of the cost of purchasing the Surety Bond, if any, to satisfy the Reserve Requirement.

(b) *Designation of Refunded Bonds.* As outlined in the recitals to this ordinance, certain principal maturities of the 2009 Refunding Bond Candidates and the 2011 Refunding Bond Candidates may be called for redemption prior to their scheduled maturities. All or some of these bonds may be refunded and defeased with the proceeds of the Bonds authorized by this ordinance. As provided in Section 15, the Designated Representative may select some or all of the 2009 Refunding Bond Candidates and 2011 Refunding Bond Candidates and designate those 2009 Refunding Bond Candidates and/or 2011 Refunding Bond Candidates as the "Refunded Bonds" in the Official Statement.

(c) *Refunding Plan.* A portion of the proceeds of sale of the Bonds, together with other funds, if any, provided by the City shall be delivered to the Escrow Agent for the purpose of defeasing the Refunded Bonds and paying related costs of issuance. Money received by the Escrow Agent from Bond proceeds and other money provided by the City shall be used immediately by the Escrow Agent upon receipt thereof in accordance with the terms of the Escrow Agreement to defease the Refunded Bonds as authorized by the 2009 Bond Ordinance and the 2011 Bond Ordinance, respectively, and pay costs of issuance of the Bonds. The City shall defease the Refunded Bonds and discharge such obligations to purchase certain Government Obligations (which obligations so purchased, are herein called "Acquired Obligations"), bearing such interest and maturing as to principal and interest in such amounts and at such times which, together with any necessary beginning cash balance, will provide for the payment of:

(1) Interest on the Refunded Bonds as such becomes due on and prior to the Call Date; and

(2) The redemption price (100% of the principal amount) of the Refunded Bonds payable on the Call Date.

Such Acquired Obligations shall be purchased at a yield not greater than the yield permitted by the Code and regulations relating to acquired obligations in connection with refunding bond issues.

(d) *Escrow Agent/Escrow Agreement.* U.S. Bank National Association, Seattle, Washington, is hereby authorized to act as the escrow agent (the "Escrow Agent") for the Refunded Bonds. The Designated Representative is hereby authorized to designate an accounting firm to act as escrow verification agent. A beginning cash balance, if any, and

Acquired Obligations shall be deposited irrevocably with the Escrow Agent in an amount sufficient to defease the Refunded Bonds. The proceeds of the Bonds after acquisition of the Acquired Obligations and provision for the necessary beginning cash balance shall be utilized to pay expenses of the acquisition and safekeeping of the Acquired Obligations and expenses of the issuance of the Bonds.

In order to carry out the purposes of this section, the Chief Financial Officer is authorized and directed to execute and deliver to the Escrow Agent, an Escrow Deposit Agreement and a Cost of Issuance Agreement.

(e) *Implementation of Refunding Plan.* The City hereby irrevocably calls the Refunded Bonds for redemption on the Call Date in accordance with the provisions of the 2009 Bond Ordinance and the 2011 Bond Ordinance, respectively. Said defeasance and call for redemption of the Refunded Bonds shall be irrevocable after the final establishment of the escrow account and delivery of the Acquired Obligations to the Escrow Agent.

The Escrow Agent is hereby authorized and directed to provide for the giving of notices of the redemption of the Refunded Bonds in accordance with the applicable provisions of the 2009 Bond Ordinance and the 2011 Bond Ordinance, respectively. The Chief Financial Officer is authorized and requested to provide whatever assistance is necessary to accomplish such redemption and the giving of notices therefor. The costs of publication of such notices shall be an expense of the City.

The Escrow Agent is hereby authorized and directed to pay to the paying agent for the Refunded Bonds, sums sufficient to pay, when due, the payments specified in of subsection (c) above. All such sums shall be paid from the money and Acquired Obligations deposited with said Escrow Agent pursuant to this section, and the income therefrom and proceeds thereof.

The City will take such actions as are found necessary to ensure that all necessary and proper fees, compensation and expenses of the Escrow Agent shall be paid when due.

Section 17. Undertaking to Provide Ongoing Disclosure. The Chief Financial Officer is hereby authorized to enter into a written undertaking for the benefit of the owners of the Bonds as required by Section (b)(5) of the Rule (the "Continuing Disclosure Agreement").

Section 18. Amendments.

(a) The Council from time to time and at any time may pass an ordinance or ordinances supplemental hereof, which ordinance or ordinances thereafter shall become a part of this ordinance, for any one or more or all of the following purposes:

(1) To add to the covenants and agreements of the City in this ordinance, other covenants and agreements thereafter to be observed, which shall not adversely affect the interests of the holders of any Parity Bonds, or to surrender any right or power herein reserved.

(2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this ordinance or any ordinance authorizing future Parity Bonds in regard to matters or questions arising under such ordinances as the Council may deem necessary or desirable and not inconsistent with such ordinances and which shall not adversely affect, in any material respect, the interest of the holders of Parity Bonds.

Any such supplemental ordinance may be adopted without the consent of the holders of any Parity Bonds at any time outstanding, notwithstanding any of the provisions of subsection (b) of this section.

(b) With the consent of the holders of not less than 65% in aggregate principal amount of the Parity Bonds at the time outstanding, the Council may pass an ordinance or

ordinances supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall:

(1) Extend the fixed maturity of any Parity Bonds, or reduce the rate of interest thereon, or extend the time of payment of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the holder of each bond so affected; or

(2) Reduce the aforesaid percentage of bondholders required to approve any such supplemental ordinance, without the consent of the holders of all of the Parity Bonds then outstanding.

It shall not be necessary for the consent of bondholders under this subsection (b) to approve the particular form of any proposed supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

For the purpose of consenting to amendments under this Section 18(b) except for amendments that alter the interest rate on any Parity Bonds, the maturity date, interest payment dates, purchase upon tender or redemption of any Parity Bonds, the issuer of a Credit Facility shall be deemed to be the sole Registered Owner of the Parity Bonds that are payable from such Credit Facility and that are then outstanding.

(c) Upon the passage of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City under this ordinance and all holders of Parity Bonds outstanding hereunder shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments, and all terms and

conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this ordinance for any and all purposes.

(d) Parity Bonds executed and delivered after the execution of any supplemental ordinance passed pursuant to the provisions of this section may have a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new bonds so modified as to conform, in the opinion of the Council, to any modification of this ordinance contained in any such supplemental ordinance, may be prepared and delivered without cost to the holders of any affected Parity Bonds then outstanding, upon surrender for cancellation of such bonds with all unmatured coupons and all matured coupons not fully paid, in equal aggregate principal amounts.

Section 19. Severability. If any provision in this ordinance is declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provision of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bonds.

Section 20. Effective Date. This ordinance shall be effective fifteen days after it becomes valid pursuant to Section 3.4 of the City Charter.

PASSED by the City Council of the City of Everett, Washington, at a regular meeting of said Council held this 2nd day of November, 2016.

CITY OF EVERETT, WASHINGTON

By _____
Mayor

Attest:

By _____
City Clerk

DATE OF PUBLICATION:

EFFECTIVE DATE:

CERTIFICATE

I, the undersigned, City Clerk of the City Council, of the City of Everett, Washington (the "City") and keeper of the records of the City Council (the "City Council"), DO HEREBY CERTIFY:

1. That the attached Ordinance is a true and correct copy of Ordinance No. _____ of the City Council (the "Ordinance"), duly passed at a regular meeting thereof held on the 2nd day of November, 2016.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the City Council voted in the proper manner for the adoption of the Ordinance; that all other requirements and proceedings incident to the proper adoption of the Ordinance have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2016.

_____
City Clerk

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance closing a special improvement project entitled "North Everett Pedestrian and Bicycle Safety" Fund 303, Program 093, as established by Ordinance No. 3243-11

____ Briefing
____ Proposed Action
____ Consent
____ Action
____ First Reading
____ Second Reading
____ Third Reading
____ Public Hearing
____ Budget Advisory

COUNCIL BILL # CB1610-44
Originating Department Public Works
Contact Person Ryan Sass
Phone Number (425) 257-8942
FOR AGENDA OF October 26, 2016

Initialed by:
Department Head
CAA db
Council President

Location
Broadway Avenue
Colby Avenue
36th Street

Preceding Action
Ordinance No. 3243-11 approved 11/16/11

Attachments
Proposed Ordinance

Department(s) Approval
Public Works

Amount Budgeted	$ 410,000	
Expenditure Required	$ 408,759	Account Number(s): PW 3467
Budget Remaining	$ 1,241	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
The "North Everett Pedestrian and Bicycle Safety" special improvement project constructed pedestrian improvements on three City streets: Broadway at 12th Street, 19th Street, 33rd Street and 37th Street, Colby Avenue at 33rd Street and 37th Street and 36th Street between Broadway and Smith Avenue. Improvements included Americans with Disabilities Act (ADA) curb ramps, radar speed feedback signs, bicycle detection and ADA accessible pedestrian push buttons at existing traffic signals. The project also included the construction of a sidewalk on 36th Street from Broadway Avenue to Smith Avenue.

The funding source for this project was:

State Grant – HLP-PB11(018) $408,759

RECOMMENDATION (Exact action requested of Council):
Adopt an Ordinance closing a special improvement project entitled "North Everett Pedestrian and Bicycle Safety" Fund 303, Program 093 as established by Ordinance No. 3243-11.

AGREEMENT/CONTRACT ROUTING COVERSHEET

To: Clerk's Office
From: Ryan Sass
RE: Documents for Mayor's Signature

Date: 10/11/2016
Department: Public Works
Expedite: Yes ☐ No ☑

Project Title/Description of Service:	Ordinance Closing Prj-North Evt Ped & Bicycle Safety
Project Manager:	Ryan Sass
Contractor/Vendor/Agency:	
Council Approval Date (if applicable):	
Contract End Date:	Upon Pass Ordinance/Signature
Amendment/Supplemental/Change Order #:	N/A
Public Works WO Number / GL Code:	PW3467
Tracking # (federal, state, county, etc.):	N/A
Total Compensation Amount:	$408,759.00

1 Number of copies attached

PLEASE SELECT THE DOCUMENT TYPE:

- ☐ 1) Professional Services (PSA, Performer, etc.)
- ☐ 2) Grants (Applications, Human Needs, etc.)
- ☐ 3) Interlocal / Interagency
- ☐ 4) Lease / Use of Property
- ☐ 5) Purchase Agreement
- ☑ Other: Ordinance
- ☐ 6) Technology (IT, Telecom, Software)
- ☐ 7) Capital Contracts (Construction)
- ☐ 8) Real Property (Deeds, Easements, Covenants, etc.)
- ☐ 9) JOC / Small Works
- ☐ 10) Amendments / Change Orders

Previous Action (if any):

Any changes to the standard legal form: Yes ☐ No ☑

Legal Approval (If applicable, who approved in Legal?)

Project Description:

An Ordinance closing special improvement project entitled "North Everett Pedestrian and Bicycle Safety" Fund 303, Program 093, as established by Ordinance No. 3243-11

Routing (for department use):

Project Manager ✓
Manager ✓
Department Head ✓

Matt Welborn ✓
Heather Magnuson HM 10/12

TO BE COMPLETED BY CLERK'S OFFICE/LEGAL/ADMIN:

DISTRIBUTION:

____ City Attorney
____ CAO/CFO D. Bryant
____ Mayor Stephanson

Routing date:

Date signed by Mayor:

ORDINANCE NO. _____

AN ORDINANCE closing a special improvement project entitled, "North Everett Pedestrian and Bicycle Safety" Fund 303, Program 093, as established by Ordinance No. 3243-11

WHEREAS, the special improvement project entitled "North Everett Pedestrian and Bicycle Safety" Fund 303, Program 093, was established to provide for identified improvements; and

WHEREAS, the purpose of the fund has been accomplished; and

WHEREAS, there are neither outstanding obligations of the fund to be paid nor uncollected revenues to be received;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1:

That the special improvement project entitled "North Everett Pedestrian and Bicycle Safety" Fund 303, Program 093, as established by Ordinance No. 3243-11, be closed.

Section 2:

That the final expenses and revenues for the "North Everett Pedestrian and Bicycle Safety" Fund 303, Program 093, are as follows:

A. Expenses

Design and Construction	$ 408,759	
Total Expenses		$ 408,759

B. Source of Funds

State Grant – HLP-PB11(018)	$ 408,759	
Total Revenues		$ 408,759

Section 3:

There are no financial transactions remaining.

RAY STEPHANSON, MAYOR

ATTEST:

CITY CLERK

Passed:

Valid:

Published:

Effective:

RESOLUTION NO._____

Be it Resolved by the City Council of the City of Everett:

That the claims against the City of Everett for the period October 8, 2016 through October 14, 2016 having been audited and approved, have been paid and the disbursements have been made against the proper funds in payment thereof, as follows:

Fund	Department	Amount
002	General Government	658.00
003	Legal	14,331.70
004	Administration	5,200.00
005	Municipal Court	12.60
007	Human Resources	92.40
009	Misc Financial Funds	594,950.69
015	Information Technology	4.20
026	Animal Shelter	466.60
031	Police	447.74
032	Fire	2,687.67
038	Facilities/Maintenance	3,991.61
	TOTAL GENERAL FUND	**622,843.21**

Fund	Department	Amount
101	Parks & Recreation	26,857.11
110	Library	20,431.88
114	Conference Center	1,200.00
120	Public Works-Streets	12,999.75
126	MV-Equipment Replacement Reser	3,617.68
146	Property Management	4,227.34
152	Cum Reserve-Library	57.07
153	Emergency Medical Services	39,750.25
156	Criminal Justice	16.80
303	PW Improvement Projects	329.25
336	Water & Sewer Sys Improv Project	3,576.73
354	Parks Capital Construction	18,472.87
401	Public Works-Utilities	250,180.11
402	Solid Waste Utility	3,872.14
425	Public Works-Transit	53,879.45
440	Golf	33,078.91
501	MVD-Transportation Services	15,930.11
503	Self-Insurance	52,103.10
505	Computer Reserve	14,854.00
508	Health Benefits Reserve	265.00
637	Police Pension	408.40
638	Fire Pension	768.41
663	Investment Earnings	1,022.00
	TOTAL CLAIMS	**1,180,741.57**

Passed and approved this _____day of _____ , 2016.

_____
Councilperson Introducing Resolution

_____
Council President

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance closing a special improvement project entitled "North Everett Pedestrian and Bicycle Safety" Fund 303, Program 093, as established by Ordinance No. 3243-11

_____	Briefing
_____	Proposed Action
_____	Consent
_____	Action
_____	First Reading
_____	Second Reading
_____	Third Reading
_____	Public Hearing
_____	Budget Advisory

COUNCIL BILL #	CB1610-44
Originating Department	Public Works
Contact Person	Ryan Sass
Phone Number	(425) 257-8942
FOR AGENDA OF	October 26, 2016

Initialed by:
Department Head _____
CAA db
Council President _____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
Broadway Avenue Colby Avenue 36th Street	Ordinance No. 3243-11 approved 11/16/11	Proposed Ordinance	Public Works

Amount Budgeted	$ 410,000	
Expenditure Required	$ 408,759	Account Number(s): PW 3467
Budget Remaining	$ 1,241	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The "North Everett Pedestrian and Bicycle Safety" special improvement project constructed pedestrian improvements on three City streets: Broadway at 12th Street, 19th Street, 33rd Street and 37th Street, Colby Avenue at 33rd Street and 37th Street and 36th Street between Broadway and Smith Avenue. Improvements included Americans with Disabilities Act (ADA) curb ramps, radar speed feedback signs, bicycle detection and ADA accessible pedestrian push buttons at existing traffic signals. The project also included the construction of a sidewalk on 36th Street from Broadway Avenue to Smith Avenue.

The funding source for this project was:

State Grant – HLP-PB11(018) $408,759

RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance closing a special improvement project entitled "North Everett Pedestrian and Bicycle Safety" Fund 303, Program 093 as established by Ordinance No. 3243-11.

ORDINANCE NO. _____

AN ORDINANCE closing a special improvement project entitled, "North Everett Pedestrian and Bicycle Safety" Fund 303, Program 093, as established by Ordinance No. 3243-11

WHEREAS, the special improvement project entitled "North Everett Pedestrian and Bicycle Safety" Fund 303, Program 093, was established to provide for identified improvements; and

WHEREAS, the purpose of the fund has been accomplished; and

WHEREAS, there are neither outstanding obligations of the fund to be paid nor uncollected revenues to be received;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1:

That the special improvement project entitled "North Everett Pedestrian and Bicycle Safety" Fund 303, Program 093, as established by Ordinance No. 3243-11, be closed.

Section 2:

That the final expenses and revenues for the "North Everett Pedestrian and Bicycle Safety" Fund 303, Program 093, are as follows:

A. Expenses

Design and Construction	$ 408,759	
Total Expenses		$ 408,759

B. Source of Funds

State Grant – HLP-PB11(018)	$ 408,759	
Total Revenues		$ 408,759

Section 3:

There are no financial transactions remaining.

RAY STEPHANSON, MAYOR

ATTEST:

CITY CLERK

Passed:

Valid:

Published:

Effective:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Call for bids for the Citywide Intersection Signing Project

_____	Briefing
_____	Proposed Action
_____	Consent
_____	Action
_____	First Reading
_____	Second Reading
_____	Third Reading
_____	Public Hearing
_____	Budget Advisory

COUNCIL BILL #	
Originating Department	Public Works
Contact Person	Ryan Sass
Phone Number	(425) 257-8942
FOR AGENDA OF	October 26, 2016

Initialed by:
Department Head _____
CAA db
Council President _____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
	9/9/15 Council adopted Ordinance No. 3447-15	Vicinity Map	Public Works

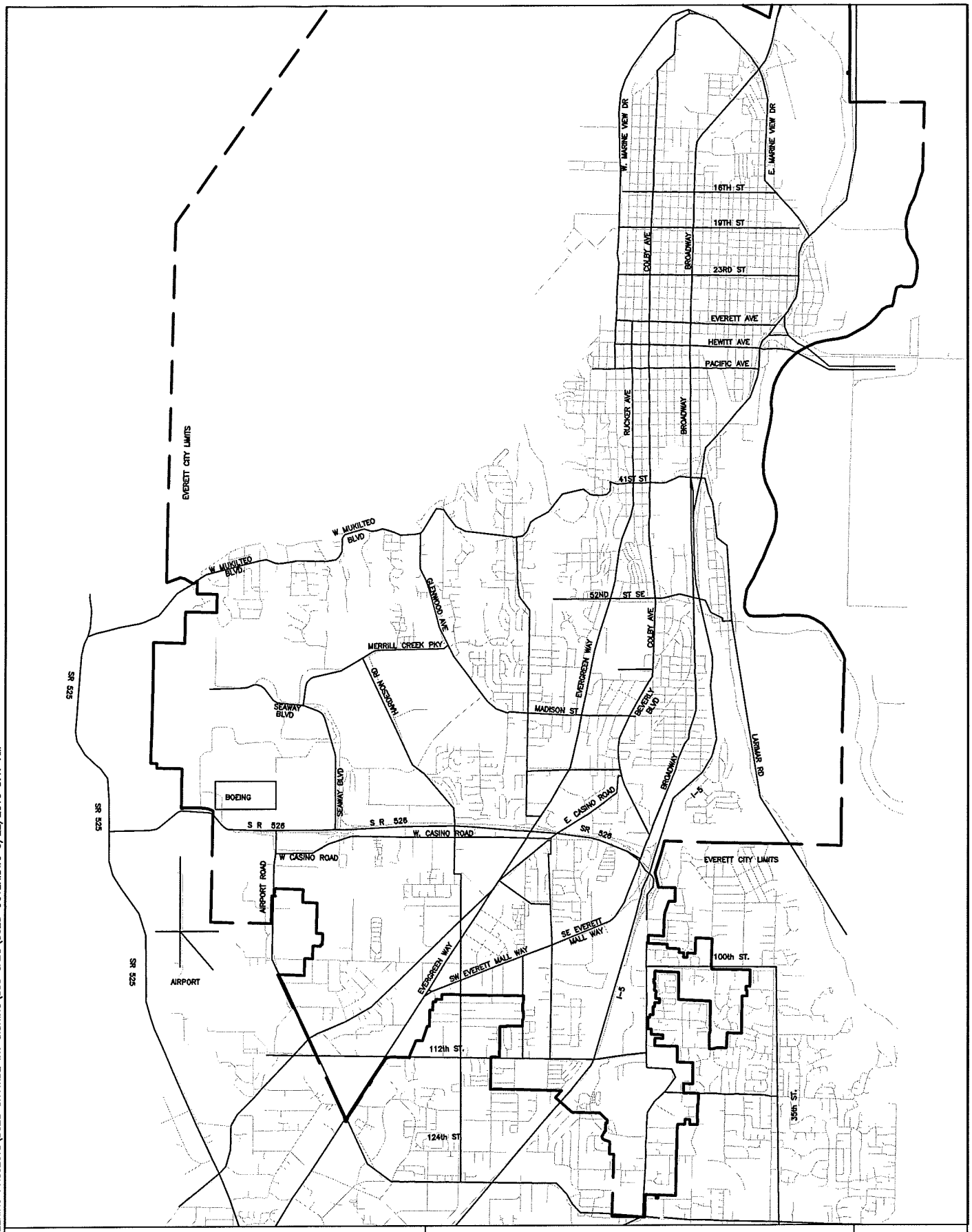
Amount Budgeted	$ 1,062,122	
Expenditure Required	$ 1,062,122	Account Number(s): PW3628
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
The construction plans and specifications are complete and the Citywide Intersection Signing Project is ready to be advertised for construction bids. This project will evaluate approximately 1,700 signs and sign posts throughout the City for compliance with Manual on Uniform Traffic Control Devices standards, as modified by WAC 468-95. Signs will be upgraded as necessary with high intensity prismatic sheeting. A Federal Highway Safety Improvement Program (HSIP) grant will provide $965,566 for design and construction of the improvements with local matching funds providing the balance.

The budget for this project is $1,062,122 and the sources of funds are:

Federal Grant – HSIP	$ 965,566
Fund 119 – Street Improvements	96,556
Total Funds	$ 1,062,122

RECOMMENDATION (Exact action requested of Council):
Authorize a call for bids for the Citywide Intersection Signing Project.



CITY OF EVERETT
PUBLIC WORKS DEPARTMENT

CITYWIDE INTERSECTION SIGNING

COE: PW3628;
FED AID#: HSIP-000S(439)

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EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Resolution Naming the proposed Riverfront Park in the Riverfront Redevelopment Project "Eclipse Mill Park"

10-19-16	Briefing	COUNCIL BILL #	
10-26-16	Proposed Action	Originating Department	Planning
	Consent	Contact Person	Paul Popelka
	Action	Phone Number	425-257-7155
	First Reading	FOR AGENDA OF	October 19, 2016
	Second Reading		October 26, 2016
	Third Reading		
10-26-16	Public Hearing		

Initialed by:
Department Head
CAA
Council President

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
Eclipse Mill Road at 36th Street	Board of Park Commissioners recommendation 06-14-16; Historical Commission recommendation 9-27-16	Resolution and Park Concept Plan	Planning

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
The Riverfront Redevelopment Project includes a 3.5 acre park, now known as Riverfront Park, to be located south of the intersection of Eclipse Mill Road and 36th Street along the Snohomish River. The park will include a restroom, group picnic building, trails, play areas and an overlook with canoe/kayak access to the river.

Potential park names were solicited from the Lowell and Port Gardner Neighborhood Associations and the general public. The Historical Commission considered twelve suggestions. After holding a public hearing on September 27, 2016, the Board of Park Commissioners and the Historical Commission recommended the park be named "Eclipse Mill Park."

RECOMMENDATION (Exact action requested of Council):
Adopt a Resolution naming the proposed Riverfront Park in the Riverfront Redevelopment Project "Eclipse Mill Park."

RESOLUTION NO. _____

A Resolution Naming the Naming the Proposed Riverfront Park in the Riverfront Redevelopment Project "Eclipse Mill Park"

WHEREAS, the City proposes to construct a 3.5 acre park located south of the intersection of Eclipse Mill Road and 36th Street along the Snohomish River to include a restroom/group picnic building, trails, play areas, canoe/kayak access to the river, and an overlook with river and waterfront views; and

WHEREAS, this proposed park has not been officially named by the City of Everett; and

WHEREAS, in September 2012 City Council adopted Resolution No. 6537, A Resolution Establishing a Policy on Public Place Names and Name Changes, which authorizes City Council to designate the names of city buildings, streets, public places, facilities and natural features by resolution; and

WHEREAS, the criteria to be used by City Council in making a decision include criterion I, which states, "{A} proposed name…may reflect the geographical location, historical or cultural significance…."; and

WHEREAS, the Parks Board reviewed this proposal on June 16, 2016 and recommended naming the park "Eclipse Mill Road;" and

WHEREAS, on September 27, 2016 the Historical Commission held a public hearing on the proposed name and recommended that City Council name the park "Eclipse Mill Road;"

NOW, THEREFORE, BE IT RESOLVED:

1. The Everett City Council concurs with the Everett Historical Commission's recommendation to rename the proposed Riverfront Park located south of the intersection of Eclipse Mill Road and 36th Street along the Snohomish River "Eclipse Mill Park;" and

2. The proposed park shown in the Park Concept Plan attached hereto is hereby named "Eclipse Mill Park" in recognition of the historic and cultural and economic significance of the Eclipse Mill that formerly occupied this area.

_____

Councilmember Introducing Resolution

PASSED and APPROVED the _____day of October, 2016.

_____

Council President

36TH STREET
NEW PUMP STATION
12' WIDE PAVED TRAIL
SIGNAGE
ONE-WAY ENTRY
VISITOR/BOAT DROP-OFF
RESTROOM/ GROUP PICNIC BUILDING
10-STALL PARALLEL PARKING ON-STREET
UTILITY CORRIDOR UNDER PARKING LOT
36-STALL PARKING LOT
ONE-WAY EXIT
SIGNAGE
6' WIDE PAVED TRAIL
SCREEN PLANTING
PLAY AREA
OPEN LAWN
STABILIZED RIVERBANK
TRAIL CONNECTION TO NORTH
SNOHOMISH RIVER
VIEWPOINT/OVERLOOK AND FLOAT ACCESS
CANOE/KAYAK FLOAT

3-ACRE PARK

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Donation of artwork done by a local artist to the Everett Municipal Art Collection from Diane Wright and Greg Nordholm

_____	Briefing
_____	Proposed Action
_____	Consent
_____	Action
_____	First Reading
_____	Second Reading
_____	Third Reading
_____	Public Hearing
_____	Budget Advisory

COUNCIL BILL #	
Originating Department	Cultural Arts
Contact Person	Carol Thomas
Phone Number	(425) 257-7101
FOR AGENDA OF	October 26, 2016

Initialed by:
Department Head
CAA
Council President

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
	Cultural Arts Commission approval		Cultural Arts

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
Everett citizens, Diane Wright and Greg Nordholm, would like to make a donation to the Everett Municipal Art Collection.

The Cultural Arts Commission recommends accepting the donation of "Silent Time" painting by d'Elaine Johnson. Johnson is an accomplished local artist.

Pursuant to EMC 2.105.020 Council may accept these gifts by motion.

RECOMMENDATION (Exact action requested of Council):
Accept the donation of artwork done by a local artist to the Everett Municipal Art Collection from Diane Wright and Greg Nordholm.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Approve the use of the 1% for Art Funds to repair and restore artwork in the City's municipal art collection

	Briefing
	Proposed Action
X	Consent
	Action
	First Reading
	Second Reading
	Third Reading
	Public Hearing
	Budget Advisory

COUNCIL BILL #	
Originating Department	Cultural Arts
Contact Person	Carol Thomas
Phone Number	(425) 257-7101
FOR AGENDA OF	October 26, 2016

Initialed by:
Department Head
CAA
Council President

Location

Preceding Action
Cultural Arts Commission approval

Attachments

Department(s) Approval
Cultural Arts

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The Cultural Arts Commission recommends the use of up to $50,000 of the 1% for Art Funds to repair and restore artwork in the City's municipal art collection.

RECOMMENDATION (Exact action requested of Council):

Approve the use of the 1% for Art Funds to repair and restore artwork in the City's municipal art collection not to exceed $50,000.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Final Plat Approval for the Towns at Riverfront

_____	Briefing
_____	Proposed Action
_____	Consent
10/26/16	Action
_____	First Reading
_____	Second Reading
_____	Third Reading
_____	Public Hearing

COUNCIL BILL #	
Originating Department	Planning
Contact Person	John Jimerson
Phone Number	(425) 257-8737
FOR AGENDA OF	October 26, 2016

Initialed by:
Department Head _____
CAA _____
Council President _____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
Riverfront Redevelopment Eclipse Mill Site	Preliminary Plat Approval, City Council Briefing on 8/17/16	Final Plat Map	Planning, Public Works

Amount Budgeted	N/A	
Expenditure Required	N/A	Account Number(s):
Budget Remaining	N/A	
Additional Required	N/A	

DETAILED SUMMARY STATEMENT:
The City Council is required to approve the final plat map for all formal subdivisions before it can be recorded and the developer may sell lots. William Lyons Homes (formerly Polygon Northwest) has requested final plat approval for the 190 townhouse subdivision located on the Eclipse Mill site within the Riverfront Redevelopment Planned Development Overlay. The preliminary plat was approved by the Hearing Examiner, and in accordance with city regulations, all public improvements will either be completed or will have appropriate financial performance guarantee(s) in place prior to Council action.

RECOMMENDATION (Exact action requested of Council):
Grant Final Plat Approval for the Towns at Riverfront.

THE TOWNS AT RIVERFRONT

A PORTION OF THE NE 1/4 AND SE 1/4, SECTION 29, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M.
CITY OF EVERETT, SNOHOMISH COUNTY, WASHINGTON

DEDICATION

KNOW ALL MEN (PERSONS) BY THESE PERSONS THAT RIVERFRONT MF, LLC, A DELAWARE LIMITED PARTNERSHIP, THE UNDERSIGNED OWNER IN FEE SIMPLE OF THE LAND HEREBY PLATTED, HEREBY DECLARES THIS PLAT AND DEDICATES TO THE USE OF THE PUBLIC FOREVER ALL STREETS, AVENUES, PLACES AND SEWER EASEMENTS OR WHATEVER PUBLIC PROPERTY THERE IS SHOWN ON THE PLAT AND THE USE THEREOF FOR ANY AND ALL PUBLIC PURPOSES NOT INCONSISTENT WITH THE USE THEREOF FOR PUBLIC HIGHWAY PURPOSES. ALSO, THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON LOTS, BLOCKS, TRACTS, ETC. SHOWN ON THIS PLAT IN THE REASONABLE ORIGINAL GRADING OF ALL THE STREETS, AVENUES, PLACES, ETC. SHOWN HEREON. ALSO, THE RIGHT TO DRAIN ALL STREETS OVER AND ACROSS ANY LOT OR LOTS WHERE WATER MIGHT TAKE A NATURAL COURSE AFTER THE STREET OR STREETS ARE GRADED. ALSO, ALL CLAIMS FOR DAMAGE AGAINST ANY GOVERNMENTAL AUTHORITY ARE WAIVED WHICH MAY BE OCCASIONED TO THE ADJACENT LAND BY THE ESTABLISHED CONSTRUCTION, DRAINAGE, AND MAINTENANCE OF SAID ROADS.

FOLLOWING ORIGINAL REASONABLE GRADING OF THE ROADS AND WAYS HEREON, NO DRAINAGE WATERS ON ANY LOT OR LOTS SHALL BE DIVERTED OR BLOCKED FROM THEIR NATURAL COURSE SO AS TO DISCHARGE UPON ANY PUBLIC ROADS RIGHTS-OF-WAY TO HAMPER PROPER ROAD DRAINAGE. THE OWNER OF ANY LOT OR LOTS, PRIOR TO MAKING ANY ALTERATION IN THE DRAINAGE SYSTEM AFTER RECORDING OF THE PLAT, MUST MAKE APPLICATION TO AND RECEIVE APPROVAL FORM THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS FOR SAID ALTERATION. ANY ENCLOSING OF DRAINAGE WATERS IN CULVERTS OR DRAINS REROUTING THEREOF ACROSS ANY LOT SHALL BE DONE BY AND AT THE EXPENSE OF SAID OWNER.

RIVERFRONT MF, LLC,
A DELAWARE LIMITED LIABILITY PARTNERSHIP

BY: _____
BRANDON SCHEIBNER
SR. VICE PRESIDENT, WASHINGTON DIVISION PRESIDENT

ACKNOWLEDGEMENTS

STATE OF)
) SS.
COUNTY OF)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2016, BY BRANDON SCHEIBNER, SR. VICE PRESIDENT, WASHINGTON DIVISION PRESIDENT OF RIVERFRONT MF, LLC, A DELAWARE LIMITED LIABILITY PARTNERSHIP, THE AUTHORIZED AGENT OF POLYGON WLH LP, A DELAWARE LIMITED PARTNERSHIP, FOR AND ON BEHALF THEREOF.

_____
NOTARY PUBLIC

_____
MY COMMISSION EXPIRES

LEGAL DESCRIPTION

PARCEL 39:
TRACT 2 OF CITY OF EVERETT BLA NO 1474-04-002 RECORDED UNDER RECORDING NO 200402190061 AND 200402195093, BEING A PORTION OF A PORTION OF GOVERNMENT LOT 3, SECTION 29, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M., RECORDS OF SNOHOMISH COUNTY, WASHINGTON;
EXCEPT THOSE PORTIONS CONVEYED TO THE CITY OF EVERETT BY DEEDS RECORDED UNDER RECORDING NOS. 200805140865 AND 200805140866.

PARCEL 40:
THE EAST HALF OF BLOCK 2 OF J.S. SINES ACRE TRACTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 11, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF VACATED ALLEY ATTACHED THERETO BY ORDINANCE NO. 484-77 RECORDED DECEMBER 16, 1977 UNDER RECORDING NO. 7712160175, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;
EXCEPT THOSE PORTIONS OF ALL OF THE ABOVE CONVEYED TO THE CITY OF EVERETT BY DEED RECORDED UNDER RECORDING NOS. 200805140865 AND 200805140866.

PARCEL 41:
LOT 13 OF BOUNDARY LINE ADJUSTMENT RECORD OF SURVEY RECORDED UNDER RECORDING NO. 200608215004 AND CITY OF EVERETT BOUNDARY LINE ADJUSTMENT NO. 05-008 RECORDED UNDER RECORDING NO. 200608210287, BEING A PORTION OF A PORTION OF GOVERNMENT LOT 3, SECTION 29, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M., RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

PARCEL 42:
THAT PORTION OF GOVERNMENT LOT 3 IN SECTION 29, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M., RECORDS OF SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTH LINE OF SAID LOT 3, 1,019.4 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT, SAME BEING ON THE EAST LINE OF THE LAND CONVEYED TO SEATTLE AND MONTANA RAILROAD CO. BY WARRANTY DEED RECORDED APRIL 25, 1902 IN VOLUME 71 OF DEEDS, PAGE 77; THENCE EAST ALONG SAID SOUTH LINE OF GOVERNMENT LOT 3, A DISTANCE OF 256.8 FEET TO THE WEST RIGHT OF WAY LINE OF EVERETT & MONTE CRISTO RAILWAY CO. AS CONVEYED BY DEED RECORDED MARCH 9, 1898 IN VOLUME 46 OF DEEDS, PAGE 40; THENCE NORTHERLY ALONG THE WEST LINE OF SAID RIGHT OF WAY 641.6 FEET TO THE SOUTH LINE OF PLAT OF EVERETT LAND COMPANY'S 1ST ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 3 OF PLATS, PAGE 20, EXTENDED EASTERLY; THENCE WESTERLY ALONG SAID PRODUCTION OF THE SOUTH LINE OF SAID PLAT AND THE SOUTH LINE OF SAID PLAT, 165.39 FEET TO THE EASTERLY LINE OF THE RIGHT OF SAID SEATTLE & MONTANA RAILROAD CO.; THENCE ANGLE LEFT 75°45' AND PROCEED SOUTHERLY ALONG THE EASTERLY LINE OF SAID RIGHT OF WAY, 314 FEET TO POINT OF CURVE TO THE LEFT; THENCE ALONG SAID CURVE, RADIUS OF 1,392.69 FEET, A DISTANCE OF 341 FEET TO THE POINT OF BEGINNING.

PARCEL 43:
LOT 16 OF BOUNDARY LINE ADJUSTMENT RECORD OF SURVEY RECORDED UNDER RECORDING NO. 200608215004 AND CITY OF EVERETT BOUNDARY LINE ADJUSTMENT NO. 05-008 RECORDED UNDER RECORDING NO. 200608210287, BEING A PORTION OF A PORTION OF GOVERNMENT LOTS 1, 2 AND 3, SECTION 29, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M., RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

EXCEPT THOSE PORTIONS CONVEYED TO THE CITY OF EVERETT BY DEEDS RECORDED UNDER RECORDING NOS. 200805140865 AND 200805140866.

PARCEL 44:
THAT PORTION OF WALNUT STREET, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF BLOCK 805, EVERETT LAND COMPANY'S 1ST ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 3 OF PLATS, PAGE 20, RECORDS OF SNOHOMISH COUNTY, WASHINGTON; THENCE NORTH TO THE SOUTH LINE OF 33RD STREET; THENCE EAST TO THE WEST LINE OF THE NORTHERN PACIFIC RAILROAD RIGHT OF WAY; THENCE SOUTHERLY ALONG THE WESTERLY OF SAID RIGHT OF WAY TO A POINT EAST OF THE TRUE POINT OF BEGINNING; THENCE WEST TO THE TRUE POINT OF BEGINNING.

PARCEL 45:
ALL THAT PART OF LOTS 17 TO 32, INCLUSIVE, BLOCK 805, PLAT OF THE EVERETT LAND COMPANY'S 1ST ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 3 OF PLATS, PAGE 20, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, LYING EASTERLY OF THE EASTERLY LINE OF THE RIGHT OF WAY OF ST PAUL, MINNEAPOLIS AND MANITOBA RAILWAY CO, WHICH EASTERLY RIGHT OF WAY LINE IS DESCRIBED IN VOLUME 78 OF DEEDS, PAGE 501, AS BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 32 THAT IS 25.8 FEET WEST OF THE NORTHEAST CORNER BLOCK 805; THENCE SOUTHWESTERLY PARALLEL TO AND 100 FEET DISTANT SOUTHEASTERLY FROM CENTERLINE OF SAID RAILWAY CO RIGHT OF WAY TO INTERSECT THE WEST LINE OF LOT 19 AT A POINT 65.3 FEET NORTH OF THE SOUTHWEST CORNER OF LOT 17, ALL IN SAID BLOCK 805.

APPROVALS

CITY OF EVERETT APPROVALS

THE CITY OF EVERETT HEREBY DETERMINES THAT THIS SUBDIVISION CONFORMS TO RCW 58.17 AND EMC TITLE 18 AND IS HEREBY APPROVED. THE CITY OF EVERETT DOES NOT IN ANY WAY WARRANT NOR GUARANTEE THE ACCURACY OF THIS RECORD OF SURVEY.

EXAMINED AND APPROVED THIS _____ DAY OF _____, 20____.

_____
CITY OF EVERETT ENGINEER

EXAMINED AND APPROVED THIS _____ DAY OF _____, 20____.

_____
DIRECTOR, CITY OF EVERETT DEPARTMENT OF PLANNING/COMMUNITY DEVELOPMENT

EXAMINED AND APPROVED THIS _____ DAY OF _____, 20____.

_____
CITY COUNCIL PRESIDENT

TREASURER'S CERTIFICATES

CITY OF EVERETT TREASURER'S CERTIFICATE

I, TREASURER OF THE CITY OF EVERETT, DO HEREBY CERTIFY THAT ALL LOCAL IMPROVEMENT ASSESSMENTS ON THE WITHIN DESCRIBED TRACT OF LAND HAVE BEEN FULLY PAID AND DISCHARGED AS OF _____, 20____.

_____
TREASURER, CITY OF EVERETT

SNOHOMISH COUNTY TREASURER'S CERTIFICATE

I HEREBY CERTIFY THAT ALL STATE AND COUNTY TAXES HERETOFORE LEVIED AGAINST THE PROPERTY DESCRIBED HEREIN, ACCORDING TO THE BOOKS AND RECORDS OF MY OFFICE, HAVE BEEN FULLY PAID AND DISCHARGED, INCLUDING 20___ TAXES.

_____
TREASURER, SNOHOMISH COUNTY

BY:

_____
DEPUTY COUNTY TREASURER

AUDITOR'S CERTIFICATE

FILED FOR RECORD AT THE REQUEST OF CORE DESIGN INC. THIS _____ DAY OF _____, 20____,
AT _____ MINUTES PAST _____M., AND RECORDED IN VOL. ___ OF PLATS, PAGES _____ TO _____,
AFN _____, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

_____
SNOHOMISH COUNTY AUDITOR

BY:

_____
DEPUTY COUNTY AUDITOR

LAND SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS FINAL PLAT OF THE TOWNS AT RIVERFRONT CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF POLYGON HOMES NW, IN NOVEMBER, 2013, AND SAID SURVEY WAS BASED UPON AN ACTUAL SURVEY OF SECTION 29, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M.; THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE LANDS ACTUALLY SURVEYED; THAT THE COURSES AND DISTANCES SHOWN HEREON ARE CORRECT; THAT (1) MONUMENTS AS DESCRIBED AND SHOWN HEREON, UNLESS STATED OTHERWISE HEREON, WILL BE SET AT ALL LOT CORNERS AS SHOWN; (2) MONUMENTS AS DESCRIBED AND SHOWN HEREON AS "SET" HAVE BEEN SET AS SHOWN; AND (3) ALL MONUMENTS DESCRIBED AND SHOWN HEREON THAT ARE SHOWN "TO BE SET" WITHIN THE RIGHT-OF-WAY, WITHIN AND WITHOUT THE BOUNDARY OF THIS SUBDIVISION, WILL BE SET AFTER THE STREET IS PAVED.

_____
GLENN R. SPRAGUE
PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO. 41299

GLENN R. SPRAGUE
STATE OF WASHINGTON
41299
REGISTERED
PROFESSIONAL LAND SURVEYOR

7-1-16

CORE DESIGN
14711 N.E. 29th Pl. Suite 101
Bellevue, Washington 98007
425.885.7877 Fax 425.885.7963
ENGINEERING • PLANNING • SURVEYING

JOB NO. 12156E

THE TOWNS AT RIVERFRONT

A PORTION OF THE NE 1/4 AND SE 1/4, SECTION 29, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M.
CITY OF EVERETT, SNOHOMISH COUNTY, WASHINGTON

NOTES

1. THE TOWNS AT RIVERFRONT HOMEOWNERS ASSOCIATION (HOA) WAS ESTABLISHED ON _____, 2016.
2. TRACTS 983, 987, 988, 989, 990, 991, 992, 993, 994, 997, 998 AND 999 ARE HEREBY CONVEYED TO THE HOA UPON THE RECORDING OF THIS PLAT FOR THE PURPOSE OF OPEN SPACE. THE HOA SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE OPEN SPACE AND ANY STORM WATER RAIN GARDEN FACILITY THAT MAY FALL WITHIN THESE TRACTS.
3. TRACT 986 IS HEREBY CONVEYED TO THE HOA UPON THE RECORDING OF THIS PLAT FOR THE PURPOSE OF OPEN SPACE AND ORDINARY HIGH WATER BUFFER. THE HOA SHALL BE RESPONSIBLE FOR THE MAINTENACE OF THE OPEN SPACE/ORDINARY HIGH WATER BUFFER EXCEPT THAT PORTION FOR WHICH THE CITY OF EVERETT HAS AN EASEMENT. SEE EASEMENT PROVISION 2.
4. TRACTS 984 AND 985 ARE HEREBY CONVEYED TO THE HOA UPON THE RECORDING OF THIS PLAT FOR THE PURPOSES OF ACCESS AND UTILITIES AND PARKING. THE HOA SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE ACCESS, PRIVATE UTILITY AND PARKING FACILITIES WITHIN SAID TRACTS.
5. TRACT 995 SHALL REMAIN OWNED AND MAINTAINED BY RIVERFRONT MF, LLC FOR THE PURPOSE OF FUTURE DEVELOPMENT.

RESTRICTIONS OF RECORD

1. THIS SITE IS SUBJECT TO FACILITY CHARGES, IF ANY, INCLUDING BUT NOT LIMITED TO HOOK-UP, OR CONNECTION CHARGES AND LATECOMER CHARGES FOR WATER OR SEWER FACILITIES OF THE CITY OF EVERETT AS DISCLOSED BY INSTRUMENT RECORDED UNDER RECORDING NO. 8408230225. AFFECTS ALL PARCELS. NOTHING SHOWN.
2. THIS SITE IS SUBJECT TO THE TERMS AND PROVISIONS OF AN EASEMENT FOR STORM AND SEWER AS DISCLOSED BY INSTRUMENT RECORDED UNDER RECORDING NO. 1917176. AFFECTS PARCEL NO.'S 39, 43, 44, AND 45 AS SHOWN HEREON. SEE SHEETS 7 AND 8.
3. THIS SITE IS SUBJECT TO UNRECORDED LEASEHOLDS, IF ANY, RIGHTS OF VENDORS AND SECURITY AGREEMENT ON PERSONAL PROPERTY AND RIGHTS OF TENANTS, AND SECURED PARTIES TO REMOVE TRADE FIXTURES AT THE EXPIRATION OF THE TERM. AFFECTS ALL PARCELS. NOTHING SHOWN.
4. THIS SITE IS SUBJECT TO ANY AND ALL OFFERS OF DEDICATION, CONDITIONS, RESTRICTIONS, EASEMENTS, BOUNDARY DISCREPANCIES OR ENCROACHMENTS, NOTES AND/OR PROVISIONS SHOWN OR DISCLOSED BY SHORT PLAT OR PLAT OF J.S. SINES ACRE TRACTS RECORDED IN VOLUME 4 OF PLATS, PAGE 11. AFFECTS PARCEL 40. NOTHING SHOWN.
5. THIS SITE IS SUBJECT TO ANY AND ALL OFFERS OF DEDICATION, CONDITIONS, RESTRICTIONS, EASEMENTS, BOUNDARY DISCREPANCIES OR ENCROACHMENTS, NOTES AND/OR PROVISIONS SHOWN OR DISCLOSED BY SHORT PLAT OR PLAT OF EVERETT LAND COMPANY'S 1ST ADDITION RECORDED IN VOLUME 3 OF PLATS, PAGE 20. AFFECTS PARCELS 44 AND 45. NOTHING SHOWN.
6. THIS SITE IS SUBJECT TO RESERVATIONS AND EXCEPTIONS REGARDING MINERAL RIGHTS AS DISCLOSED BY INSTRUMENT UNDER RECORDING NO. 7707290103. AFFECTS PARCEL 40. NOTHING SHOWN.
7. THIS SITE IS SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND/OR EASEMENTS AS DISCLOSED BY QUIT CLAIM DEED RECORDED UNDER RECORDING NO. 200608250618. AFFECTS PARCELS 41 AND 43. NOTHING SHOWN.
8. THIS SITE IS SUBJECT TO AN OPERATING EASEMENT AGREEMENT BETWEEN THE CITY OF EVERETT AND BNSF RAILWAY COMPANY AS DISCLOSED BY INSTRUMENT RECORDED UNDER RECORDING NO. 200608250621. AFFECTS PARCELS 41 AND 43. NOTHING SHOWN.
9. THIS SITE IS SUBJECT TO THE TERMS, PROVISIONS AND EASEMENT(S) CONTAINED IN THE DOCUMENT ENTITLED "CONDITIONAL EASEMENT FOR ACCESS AND UTILITIES" AS DISCLOSED BY INSTRUMENT RECORDED UNDER RECORDING NO. 200802010052. SAID INSTRUMENT IS A RE-RECORD OF RECORDING NO(S). 200406040719. AFFECTS PARCEL 39. LOCATION OF 30' WIDE EASEMENT IS NOT DETERMINABLE. NOTHING SHOWN.
10. THIS SITE IS SUBJECT TO THE TERMS AND CONDITIONS OF A MEMORANDUM OF PROPERTY DISPOSITION AGREEMENT AS DISCLOSED BY INSTRUMENT RECORDED UNDER RECORDING NO. 200805140850. MEMORANDUM OF ASSIGNMENT RECORDED UNDER RECORDING NO. 201307050570. MILL ASSIGNMENT AND ASSUMPTION AGREEMENT WAS RECORDED UNDER RECORDING NO. 201410070764. AFFECTS ALL PARCELS. NOTHING SHOWN.
11. THIS SITE IS SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS AND/OR EASEMENTS AS DISCLOSED BY SPECIAL WARRANTY DEED RECORDED UNDER RECORDING NO. 200805140862. AFFECTS ALL PARCELS. NOTHING SHOWN.
12. THIS SITE IS SUBJECT TO THE TERMS AND CONDITIONS OF A PUBLIC AMENITIES DEDICATION, EASEMENT AND MAINTENANCE AGREEMENT AS DISCLOSED BY INSTRUMENT RECORDED UNDER RECORDING NO. 200805140863. MEMORANDUM OF ASSIGNMENT RECORDED UNDER RECORDING NO. 201307050570. MILL ASSIGNMENT AND ASSUMPTION AGREEMENT WAS RECORDED UNDER RECORDING NO. 201410070764. AFFECTS PARCEL 40. NOTHING SHOWN.
13. THIS SITE IS SUBJECT TO THE TERMS AND CONDITIONS OF A TERMINATION OF EXISTING EASEMENTS AND NON-LANDFILL SITE UTILITY EASEMENTS AND ACCESS AGREEMENT AS DISCLOSED BY INSTRUMENT RECORDED UNDER RECORDING NO. 200805140864. MEMORANDUM OF ASSIGNMENT RECORDED UNDER RECORDING NO. 201307050570. MILL ASSIGNMENT AND ASSUMPTION AGREEMENT WAS RECORDED UNDER RECORDING NO. 201410070764. AFFECTS PARCEL 40 AND 43. NOT SHOWN. ACCESS AND UTILITY MOVES TO THE RIGHT OF WAY DEDICATION UPON THE RECORDING OF THIS PLAT.
14. THIS SITE IS SUBJECT TO THE TERMS AND PROVISIONS OF A LANDFILL GAS MANAGEMENT SYSTEM, LEACHATE COLLECTION SYSTEM, GROUNDWATER MONITORING SYSTEM, AND UTILITIES EASEMENT AS DISCLOSED BY INSTRUMENT RECORDED UNDER RECORDING NO. 200805140923. MEMORANDUM OF ASSIGNMENT RECORDED UNDER RECORDING NO. 201307050570. MILL ASSIGNMENT AND ASSUMPTION AGREEMENT WAS RECORDED UNDER RECORDING NO. 201410070764. AFFECTS PARCEL 39 AND 42. APPROXIMATE LOCATION OF MONITOR WELLS SHOWN HEREON. SEE SHEETS 8, 9 AND 10.
15. THIS SITE IS SUBJECT TO THE TERMS AND CONDITIONS OF RECIPROCAL TEMPORARY CONSTRUCTION AND ACCESS EASEMENTS DISCLOSED BY INSTRUMENT RECORDED UNDER RECORDING NO. 200805140925. MEMORANDUM OF ASSIGNMENT RECORDED UNDER RECORDING NO. 201307050570. MILL ASSIGNMENT AND ASSUMPTION AGREEMENT WAS RECORDED UNDER RECORDING NO. 201410070764. AFFECTS ALL PARCELS. NOTHING SHOWN.
16. THIS SITE IS SUBJECT TO THE TERMS AND CONDITIONS OF A MEMORANDUM MILL PROPERTY ENVIRONMENTAL AND INDEMNIFICATION AGREEMENT AS DISCLOSED BY INSTRUMENT RECORDED UNDER RECORDING NO. 200805140930. MEMORANDUM OF ASSIGNMENT RECORDED UNDER RECORDING NO. 201307050570. MILL ASSIGNMENT AND ASSUMPTION AGREEMENT WAS RECORDED UNDER RECORDING NO. 201410070764. AFFECTS ALL PARCELS. NOTHING SHOWN.
17. THIS SITE IS SUBJECT TO THE TERMS AND CONDITIONS OF A MITIGATION AGREEMENT AS DISCLOSED BY INSTRUMENT RECORDED UNDER RECORDING NO. 200902110443. AFFECTS ALL PARCELS. NOTHING SHOWN.
18. THIS SITE IS SUBJECT TO THE TERMS AND CONDITIONS OF A MEMORANDUM OF DEVELOPMENT AGREEMENT AS DISCLOSED BY INSTRUMENT RECORDED UNDER RECORDING NO. 200911050280. MEMORANDUM OF ASSIGNMENT RECORDED UNDER RECORDING NO. 201307050570. MILL ASSIGNMENT AND ASSUMPTION AGREEMENT WAS RECORDED UNDER RECORDING NO. 201410070764. AFFECTS ALL PARCELS. NOTHING SHOWN.
19. THIS SITE IS SUBJECT TO A MEMORANDUM OF ASSIGNMENT AS DISCLOSED IN INSTRUMENT RECORDED UNDER RECORDING NO. 201307050570, AND A MILL ASSIGNMENT AND ASSUMPTION AGREEMENT RECORDED UNDER RECORDING NO. 201410070764. AFFECTS ALL PARCELS. NOTHING SHOWN.
20. THIS SITE IS SUBJECT TO ANY QUESTIONS THAT MAY ARISE DUE TO SHIFTING OR CHANGE OF THE LINE OF HIGH WATER OF THE SNOHOMISH RIVER. AFFECTS PARCEL 39. NOTHING SHOWN.
21. THIS SITE IS SUBJECT TO ANY QUESTION AS TO THE TRUE LOCATION OF THE LATERAL BOUNDARIES OF THE TIDELANDS. AFFECTS PARCEL 39. NOTHING SHOWN.
22. THIS SITE IS SUBJECT TO ANY QUESTION THAT MAY ARISE DUE TO THE SHIFTING AND/OR CHANGING IN THE COURSE OF THE SNOHOMISH RIVER. AFFECTS ALL PARCELS. NOTHING SHOWN.
23. THIS SITE IS SUBJECT TO ANY PROHIBITION OR LIMITATION ON THE USE, OCCUPANCY OR IMPROVEMENTS OF THE LAND RESULTING FROM THE RIGHT OF THE PUBLIC OR RIPARIAN OWNERS TO USE ANY WATERS WHICH MAY COVER THE LAND OR TO USE ANY PORTION OF THE LAND WHICH IS NOW OR MAY FORMERLY HAVE BEEN COVERED BY WATER. AFFECTS PARCEL 39. NOTHING SHOWN.
24. THIS SITE IS SUBJECT TO PARAMOUNT RIGHTS AND EASEMENTS IN FAVOR OF THE UNITED STATES FOR COMMERCE, NAVIGATION, FISHERIES AND THE PRODUCTION OF POWER. AFFECTS PARCEL 39. NOTHING SHOWN.
25. THIS SITE IS SUBJECT TO THE TERMS, COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, BOUNDARY DISCREPANCIES AND ENCROACHMENTS AS CONTAINED IN RECORDED BOUNDARY LINE ADJUSTMENT AS DISCLOSED IN SURVEY RECORDED UNDER RECORDING NO. 200402190061 AND 200402195093. AFFECTS PARCEL 39. NOTHING SHOWN.
26. THIS SITE IS SUBJECT TO THE TERMS, COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, BOUNDARY DISCREPANCIES AND ENCROACHMENTS AS CONTAINED IN RECORDED BOUNDARY LINE ADJUSTMENT AS DISCLOSED IN SURVEY RECORDED UNDER RECORDING NO. 200608210287. AFFECTS PARCELS 41 AND 43. NOTHING SHOWN.
27. THIS SITE IS SUBJECT TO A SURVEY BY PERTEET INC., DATED JULY 2007, LAST UPDATED APRIL 2008, JOB NO. 53157. SAID SURVEY DISCLOSES THE FOLLOWING:
    A. PUBLIC ASPHALT PATH CROSSES THE PROPERTY LINES (SHEET 2-4). AFFECTS NO PARCELS.
    B. RAILROAD TRACKS CROSSING PROPERTY (SHEETS 2-8). AFFECTS NO PARCELS. TRACKS REMOVED.
    C. ASPHALT AND BUILDING ENCROACHMENT OVER THE SOUTHERLY PROPERTY LINE (SHEET 7). AFFECTS NO PARCELS. BUILDING REMOVED.
    D. OVERHEAD POWER SERVING EASTERLY ADJOINER (SHEETS 7 AND 8). AFFECTS PARCEL 43. SHOWN HEREON. SEE SHEET 6.
    E. FENCE ENCROACHMENT (SHEET 8). AFFECTS PARCEL 43. SHOWN HEREON. SEE SHEET 6.
    F. DIRT AND GRAVEL ROADS CONNECTING WITH ADJOINERS (SHEETS 2, 3, 4, 6, 7 AND 10). AFFECTS NO PARCELS. ROAD REMOVED.
    G. STORM DRAIN LINE CROSSING NORTHWESTERLY PORTION OF LOT 13. AFFECTS NO PARCELS.
    H. OP LINE CROSSING PARCEL 39. AFFECTS SOUTHERN PORTION OF PARCEL 39. EXCEPTED FROM PROPERTY PER 200805140865.
28. THIS SITE IS SUBJECT TO A SURVEY BY PERTEET INC., DATED JUNE 24, 2013, JOB NO. 20130143. SAID SURVEY DISCLOSES THE FOLLOWING:
    A. STORM DRAIN CROSSING NORTHWESTERLY CORNER OF PARCEL 43 (NOTED ON SHEET 8). AFFECTS PARCEL 43. DOCUMENT ILLEGIBLE. UNABLE TO DETERMINE EXACT LOCATION. NOTHING SHOWN.
    B. CONCRETE IMPROVEMENT ENCROACHING OVER NORTHWESTERLY LINE OF PARCEL 43 ONTO WESTERLY ADJOINER (NOTED ON SHEET 8). AFFECTS PARCEL 43. LOCATED AND DETERMINED TO BE A PORTION OF CONSTRUCTION OF THE NEW RIVERFRONT BLVD. NOT SHOWN.

LOT ADDRESSING

LOT NO.	HOUSE NO.	FULL ADDRESS
1	3402	30TH DRIVE
2	3404	30TH DRIVE
3	3406	30TH DRIVE
4	3408	30TH DRIVE
5	3410	30TH DRIVE
6	3414	30TH DRIVE
7	3416	30TH DRIVE
8	3418	30TH DRIVE
9	3420	30TH DRIVE
10	3422	30TH DRIVE
11	3424	30TH DRIVE
12	3011	34TH PLACE
13	3009	34TH PLACE
14	3007	34TH PLACE
15	3005	34TH PLACE
16	3003	34TH PLACE
17	3002	34TH PLACE
18	3004	34TH PLACE
19	3006	34TH PLACE
20	3008	34TH PLACE
21	3010	34TH PLACE
22	3012	34TH PLACE
23	3011	35TH STREET
24	3009	35TH STREET
25	3007	35TH STREET
26	3005	35TH STREET
27	3003	35TH STREET
28	3001	35TH STREET
29	3424	30TH AVENUE
30	3426	30TH AVENUE
31	3428	30TH AVENUE
32	3502	30TH AVENUE
33	3504	30TH AVENUE
34	3506	30TH AVENUE
35	3508	30TH AVENUE
36	3002	35TH STREET
37	3004	35TH STREET
38	3006	35TH STREET
39	3008	35TH STREET
40	3514	30TH DRIVE
41	3512	30TH DRIVE
42	3510	30TH DRIVE
43	3508	30TH DRIVE
44	3506	30TH DRIVE
45	3504	30TH DRIVE
46	3502	30TH DRIVE
47	3451	30TH DRIVE
48	3449	30TH DRIVE
49	3447	30TH DRIVE
50	3445	30TH DRIVE
51	3443	30TH DRIVE
52	3441	30TH DRIVE
53	3439	30TH DRIVE
54	3435	30TH DRIVE
55	3433	30TH DRIVE
56	3431	30TH DRIVE
57	3429	30TH DRIVE
58	3427	30TH DRIVE
59	3425	30TH DRIVE
60	3423	30TH DRIVE
61	3419	30TH DRIVE
62	3417	30TH DRIVE
63	3415	30TH DRIVE
64	3413	30TH DRIVE
65	3411	30TH DRIVE
66	3409	30TH DRIVE
67	3405	30TH DRIVE
68	3403	30TH DRIVE
69	3401	30TH DRIVE
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81	3321	30TH DRIVE
82	3319	30TH DRIVE
83	3317	30TH DRIVE
84	3315	30TH DRIVE
85	3302	31ST DRIVE
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106	3402	31ST DRIVE
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179	3313	31ST DRIVE
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183	3321	31ST DRIVE
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189	3309	31ST DRIVE
190	3311	31ST DRIVE

GLENN R. SPRAGUE — STATE OF WASHINGTON — 41290 — REGISTERED PROFESSIONAL LAND SURVEYOR
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JOB NO. 12156E

THE TOWNS AT RIVERFRONT

A PORTION OF THE NE 1/4 AND SE 1/4, SECTION 29, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M.
CITY OF EVERETT, SNOHOMISH COUNTY, WASHINGTON

EASEMENT PROVISIONS

1. AN EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO ALL UTILITIES, THE HOA AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS SERVING THIS PLAT UNDER AND UPON THE EXTERIOR FIVE (5.00) FEET PARALLEL WITH AND ADJOINING THE PRIVATE STREET FRONTAGE OF ALL LOTS, OR AS SHOWN HEREON AS "JOINT UTILITY EASEMENT" IN WHICH TO INSTALL, LAY, CONSTRUCT, RENEW, OPERATE AND MAINTAIN STREET LIGHTS, UNDERGROUND CONDUITS, CABLES, PIPE AND WIRES WITH NECESSARY FACILITIES AND OTHER EQUIPMENT FOR THE PURPOSE OF SERVING THIS SUBDIVISION AND OTHER PROPERTY WITH WATER, ELECTRICITY, TELEPHONE AND OTHER UTILITY SERVICES, TOGETHER WITH THE RIGHT TO ENTER UPON THE PROPERTIES AT ALL TIMES FOR THE PURPOSES HEREIN STATED PROVIDED THAT FOLLOWING ANY WORK, THE EASEMENT AREA SHALL BE RESTORED AS NEARLY AS POSSIBLE TO THE ORIGINAL CONDITION.
2. A 12.00 FOOT WIDE PUBLIC TRAIL EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO THE CITY OF EVERETT AND ITS SUCCESSORS AND ASSIGNS FOR PUBLIC PEDESTRIAN PURPOSES OVER THE PUBLIC TRAIL AS CONSTRUCTED, WITHIN THOSE PORTIONS OF TRACT 986, THE CENTERLINE OF WHICH IS APPROXIMATELY SHOWN HEREON. THE CITY OF EVERETT IS HEREBY RESPONSIBLE FOR THE MAINTENANCE OF THE TRAIL AND WALL FACILITIES WITHIN SAID EASEMENT.
3. A 5.00 FOOT WIDE PUBLIC TRAIL EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO THE CITY OF EVERETT AND ITS SUCCESSORS AND ASSIGNS FOR PUBLIC PEDESTRIAN PURPOSES OVER THE PUBLIC TRAIL AS CONSTRUCTED, WITHIN THOSE PORTIONS OF LOTS 173 THROUGH 181, THE CENTERLINE OF WHICH IS APPROXIMATELY SHOWN HEREON. THE CITY OF EVERETT IS HEREBY RESPONSIBLE FOR THE MAINTENANCE OF THE TRAIL FACILITIES WITHIN SAID EASEMENT.
4. PUBLIC TRAIL SIGNAGE EASEMENTS OVER AND UPON PORTIONS OF TRACT 985 AND 986, ARE HEREBY RESERVED FOR AND GRANTED TO THE CITY OF EVERETT AND ITS SUCCESSORS AND ASSIGNS. SAID EASEMENTS ARE 5' X 5' SQUARE, CENTERED UPON THE POST, AS INSTALLED. THE CITY SHALL HAVE THE RIGHT TO OPERATE, MAINTAIN, REPAIR AND REPLACE THE SIGNAGE WITHIN SAID EASEMENT TOGETHER WITH THE RIGHT TO ACCESS SAID EASEMENT AREA FROM THE RIGHT-OF-WAY FOR SUCH PURPOSES.
5. A PUBLIC ACCESS EASEMENT OVER AND UPON TRACTS 983, 986 THROUGH 995 AND 997 THROUGH 999, IS HEREBY RESERVED FOR AND GRANTED TO THE CITY OF EVERETT AND ITS SUCCESSORS AND ASSIGNS.
6. A PUBLIC ACCESS AND UTILITY EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO THE CITY OF EVERETT AND ITS SUCCESSORS AND ASSIGNS OVER, UNDER, AND UPON TRACTS 984 AND 985. THE CITY HAS THE RIGHT TO REPAIR, REPLACE, CONSTRUCT AND MAINTAIN PUBLIC UTILITY IMPROVEMENTS WITHIN THE EASEMENT AREAS AND FOLLOWING SUCH USE SHALL RESTORE AS NEAR AS POSSIBLE TO ORIGINAL CONDITION RESULTING FROM THESE ACTIVITIES.
7. A PUBLIC WATER EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO THE CITY OF EVERETT AND ITS SUCCESSORS AND ASSIGNS OVER, UNDER, AND UPON TRACTS 986, 987, 992 AND 999. TOGETHER WITH PORTIONS OF TRACTS 983, 995, 997 AND LOTS 135, 157, 178 AS SHOWN HEREON. THE CITY HAS THE RIGHT TO REPAIR, REPLACE, CONSTRUCT AND MAINTAIN PUBLIC WATER IMPROVEMENTS WITHIN THE EASEMENT AREAS AND FOLLOWING SUCH USE SHALL RESTORE AS NEAR AS POSSIBLE TO ORIGINAL CONDITION RESULTING FROM THESE ACTIVITIES.
8. A PUBLIC STORM WATER EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO THE CITY OF EVERETT AND ITS SUCCESSORS AND ASSIGNS OVER, UNDER, AND UPON TRACTS 986, 987, 992 AND 999. TOGETHER WITH A PORTION OF TRACT 983 AS SHOWN HEREON. THE CITY HAS THE RIGHT TO REPAIR, REPLACE, CONSTRUCT AND MAINTAIN PUBLIC STORM WATER IMPROVEMENTS WITHIN THE EASEMENT AREAS AND FOLLOWING SUCH USE SHALL RESTORE AS NEAR AS POSSIBLE TO ORIGINAL CONDITION RESULTING FROM THESE ACTIVITIES.
9. A PRIVATE STORM WATER EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO THE HOA OVER THE STORM WATER RAIN GARDEN FACILITIES AS CONSTRUCTED WITHIN TRACTS 983, 986, 989, 994, 997 AND ON LOTS 5, 6, 11, 13 THROUGH 28, 36 THROUGH 39, 53, 85, 121, 130, 139, 144 THROUGH 147, 155 THROUGH 159 AND 177 THROUGH 180, AS SHOWN HEREON, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING. THE HOA HAS THE RIGHT TO REPAIR, REPLACE, CONSTRUCT AND MAINTAIN THE STORM WATER AND RAIN GARDEN FACILITIES WITHIN THE EASEMENT AND FOLLOWING SUCH USE SHALL RESTORE AS NEAR AS POSSIBLE TO ORIGINAL CONDITION RESULTING FROM THESE ACTIVITIES.
10. THE 5.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE WALL EASEMENT AS SHOWN ON LOTS 1 THROUGH 3, AND LOTS 185 THROUGH 190 IS FOR THE BENEFIT OF THE TOWNS AT RIVERFRONT HOA. SAID HOA SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE WALL FACILITIES.
11. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 1, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 1 THROUGH 5. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
12. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOTS 8 AND 9, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 6 THROUGH 11. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
13. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOTS 15 AND 16, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 12 THROUGH 16. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
14. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 18, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 17 THROUGH 22. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
15. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 27, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 23 THROUGH 28. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
16. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 29, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 29 THROUGH 35. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
17. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 37, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 36 THROUGH 39. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
18. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN CENTERED ON THE SHARED LOT LINE OF LOTS 45 AND 46, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 40 THROUGH 46. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
19. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOTS 50 AND 51, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 47 THROUGH 53. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
20. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOTS 60 AND 61, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 54 THROUGH 66. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
21. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 69, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 67 THROUGH 72. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
22. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 76, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 73 THROUGH 78. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
23. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN CENTERED ON THE SHARED LOT LINE OF LOTS 83 AND 84, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 79 THROUGH 84. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
24. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOTS 88 AND 89 IS FOR THE BENEFIT OF LOTS 85 THROUGH 91. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
25. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 96, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 92 THROUGH 97. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
26. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOTS 103, 104 AND 105, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 98 THROUGH 109. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
27. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOTS 114, 115 AND 116, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 110 THROUGH 121. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
28. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOTS 125 AND 126, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 122 THROUGH 129. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
29. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON CENTERED ON THE SHARED LOT LINE OF LOTS 132 AND 133, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 130 THROUGH 134. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
30. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 138, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 135 THROUGH 139. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
31. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 142, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 140 THROUGH 145. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
32. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 149, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 146 THROUGH 151. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
33. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 154, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 152 THROUGH 157. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
34. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN CENTERED ON THE SHARED LOT LINE OF LOTS 160 AND 161, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 158 THROUGH 162. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
35. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN CENTERED ON THE SHARED LOT LINE OF LOTS 164 AND 165, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 163 THROUGH 167. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
36. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN CENTERED ON THE SHARED LOT LINE OF LOTS 170 AND 171, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 168 THROUGH 172. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
37. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 175, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 173 THROUGH 178. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
38. THE 4.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE STORM WATER EASEMENT AS SHOWN ON LOT 190, EXCEPT ANY PORTION THAT MAY LIE WITHIN A BUILDING, IS FOR THE BENEFIT OF LOTS 185 THROUGH 190. THE OWNERS OF SAID BENEFITED LOTS SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE STORM WATER FACILITIES.
39. THE 6.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE WATER EASEMENT AS SHOWN ON LOT 42 IS FOR THE BENEFIT OF LOT 43. THE OWNER OF SAID BENEFITED LOT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE WATER FACILITIES THEY HAVE THE BENEFIT OF USE.
40. THE 6.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE WATER EASEMENT AS SHOWN ON LOT 56 IS FOR THE BENEFIT OF LOT 57. THE OWNER OF SAID BENEFITED LOT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE WATER FACILITIES THEY HAVE THE BENEFIT OF USE.
41. THE 6.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE WATER EASEMENT AS SHOWN ON LOT 89 IS FOR THE BENEFIT OF LOT 88. THE OWNER OF SAID BENEFITED LOT SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE WATER FACILITIES THEY HAVE THE BENEFIT OF USE.
42. THE 5.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE SEWER EASEMENT AS SHOWN ON LOTS 179 THROUGH 184 IS FOR THE BENEFIT OF LOTS 179 THROUGH 184, 189 AND 190. THE OWNER OF SAID BENEFITED LOTS SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE SEWER FACILITIES THEY HAVE THE BENEFIT OF USE.
43. THE 5.00 FOOT WIDE STRIP OF LAND FOR A PRIVATE SEWER EASEMENT AS SHOWN ON LOTS 185 THROUGH 188 IS FOR THE BENEFIT OF LOTS 185 THROUGH 188. THE OWNER OF SAID BENEFITED LOTS SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE PRIVATE SEWER FACILITIES THEY HAVE THE BENEFIT OF USE.

GLENN R. SPRAGUE — STATE OF WASHINGTON — 41299 — REGISTERED PROFESSIONAL LAND SURVEYOR
7-1-16

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THE TOWNS AT RIVERFRONT

A PORTION OF THE NE 1/4 AND SE 1/4, SECTION 29, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M.
CITY OF EVERETT, SNOHOMISH COUNTY, WASHINGTON

SURVEY NOTES

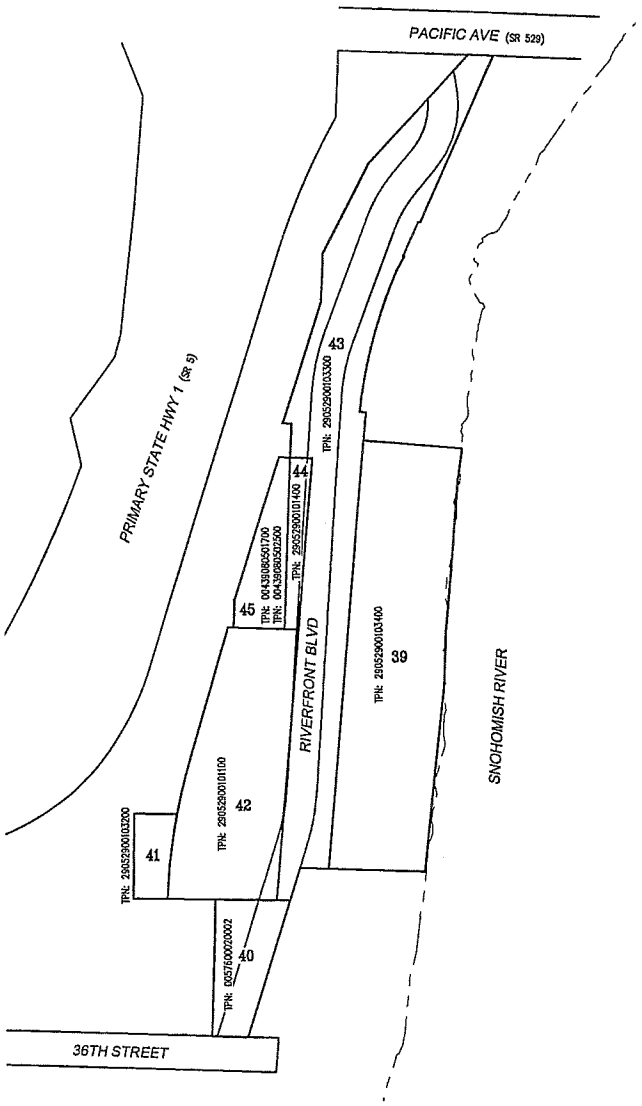
1. ALL TITLE INFORMATION SHOWN ON THIS MAP HAS BEEN EXTRACTED FROM FIRST AMERICAN TITLE INSURANCE CO. SUBDIVISION GUARANTEE NO. 2674825, DATED JUNE 24, 2016. IN PREPARING THIS MAP, CORE DESIGN, INC. HAS CONDUCTED NO INDEPENDENT TITLE SEARCH NOR IS CORE DESIGN, INC. AWARE OF ANY TITLE ISSUES AFFECTING THE SURVEYED PROPERTY OTHER THAN THOSE SHOWN ON THE MAP AND DISCLOSED BY THE REFERENCED FIRST AMERICAN TITLE INSURANCE COMPANY SUBDIVISION GUARANTEE. CORE DESIGN, INC. HAS RELIED WHOLLY ON FIRST AMERICAN TITLE INSURANCE COMPANY'S REPRESENTATIONS OF THE TITLE'S CONDITION TO PREPARE THIS SURVEY AND THEREFORE CORE DESIGN, INC. QUALIFIES THE MAP'S ACCURACY AND COMPLETENESS TO THAT EXTENT.
2. ALL SURVEY CONTROL INDICATED AS "FOUND" WAS RECOVERED FOR THIS PROJECT IN JANUARY OF 2013.
3. ALL DISTANCES ARE IN FEET.
4. THIS IS A FIELD TRAVERSE SURVEY. A SOKKIA FIVE SECOND COMBINED ELECTRONIC TOTAL STATION WAS USED TO MEASURE THE ANGULAR AND DISTANCE RELATIONSHIPS BETWEEN THE CONTROLLING MONUMENTATION AS SHOWN. CLOSURE RATIOS OF THE TRAVERSE MET OR EXCEEDED THOSE SPECIFIED IN WAC 332-130-090. ALL MEASURING INSTRUMENTS AND EQUIPMENT ARE MAINTAINED IN ADJUSTMENT ACCORDING TO MANUFACTURER'S SPECIFICATIONS.

REFERENCE SURVEYS

1. BOUNDARY LINE ADJUSTMENT AND RECORD OF SURVEY FOR THE CITY OF EVERETT PUBLIC WORKS DEPARTMENT RECORDED JUNE 30TH, 2006, RECORDED UNDER AUDITOR'S FILE NUMBER 200608215004, RECORDS OF SNOHOMISH COUNTY, WA.
2. BOUNDARY LINE ADJUSTMENT AND RECORD OF SURVEY FOR THE CITY OF EVERETT PUBLIC WORKS DEPARTMENT RECORDED APRIL 8TH, 2008, RECORDED UNDER AUDITOR'S FILE NUMBER 200804085006, RECORDS OF SNOHOMISH COUNTY, WA.
3. BOUNDARY LINE ADJUSTMENT RECORDED FEBRUARY 19, 2004, RECORDED UNDER AUDITOR'S FILE NUMBER 200402185093, RECORDS OF SNOHOMISH COUNTY, WA.
4. PLAT OF J.S. SINES ACRE TRACTS RECORDED MARCH 4TH, 1896, RECORDED IN VOLUME 4 OF PLATS, PAGE 11, RECORDS OF SNOHOMISH COUNTY, WA.
5. PLAT OF THE EVERETT LAND COMPANY'S FIRST ADDITION TO EVERETT RECORDED DECEMBER 21ST, 1891, RECORDED IN VOLUME 3 OF PLATS, PAGE 20, RECORDS OF SNOHOMISH COUNTY, WA.

BASIS OF BEARING

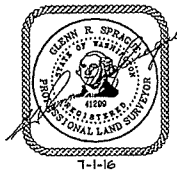
ALL DISTANCES SHOWN ON THIS SURVEY ARE GROUND DISTANCES. TO CONVERT DISTANCES TO STATE PLANE, SCALE BY THE PROJECT COMBINED FACTOR OF 0.99994835B. BEARINGS ARE BASED ON WASHINGTON STATE PLANE COORDINATE SYSTEM, NORTH ZONE (NAD 83/91), BASED ON GPS OBSERVATIONS FROM CITY OF EVERETT PRIMARY CONTROL POINTS E077, E125 AND E126. PER REFERENCE SURVEY #1.



SCALE: 1" = 200'

0 100 200 400

PARCEL BREAKDOWN



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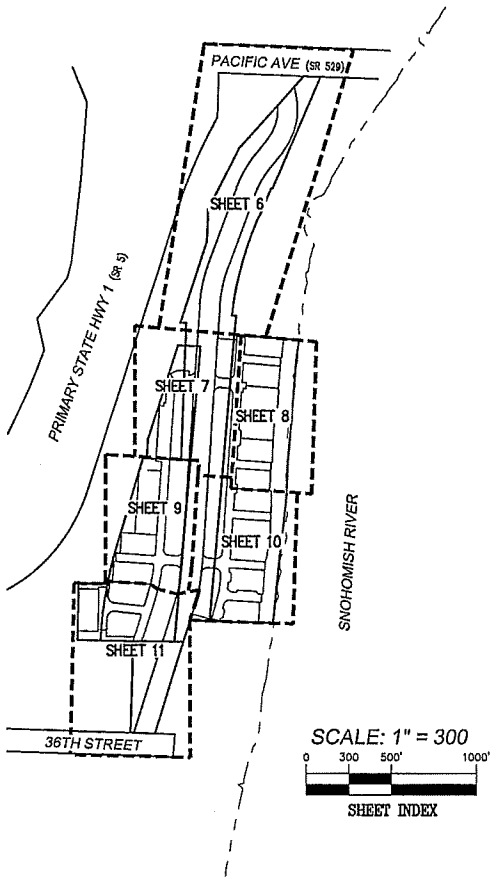
CITY OF EVERETT, SNOHOMISH COUNTY, WASHINGTON



SCALE: 1" = 300
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SHEET INDEX

SCALE: 1" = 200'
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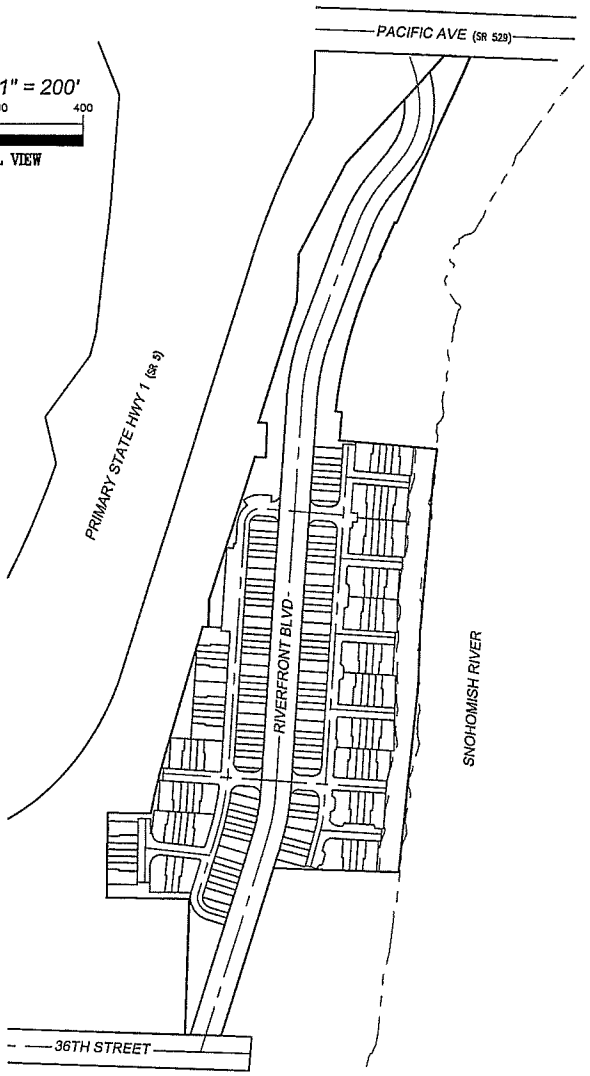
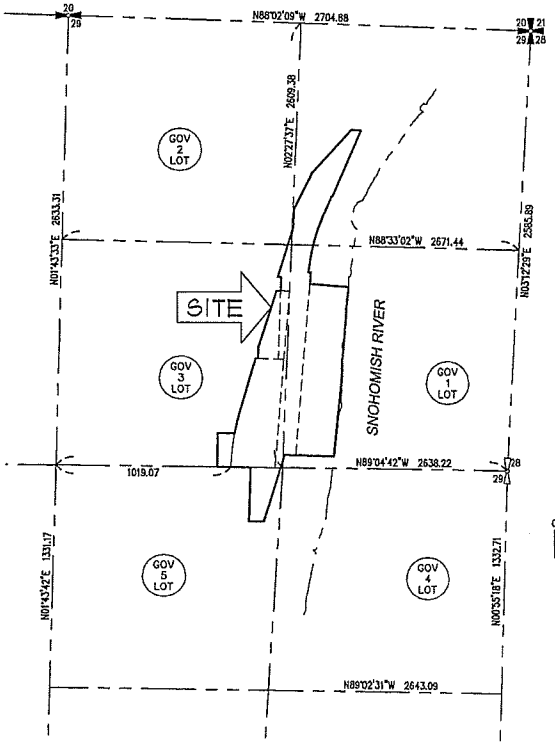
OVERALL VIEW





SCALE: 1" = 500'
0 250' 500' 1000'
SECTION BREAKDOWN
PER REFERENCE #1

GLENN R. SPRAGUE
STATE OF WASHINGTON
41209
REGISTERED PROFESSIONAL LAND SURVEYOR
7-1-16

CORE DESIGN
14711 N.E. 29th Pl. Suite 101
Bellevue, Washington 98007
425.885.7877 Fax 425.885.7963
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JOB NO. 12156E

THE TOWNS AT RIVERFRONT

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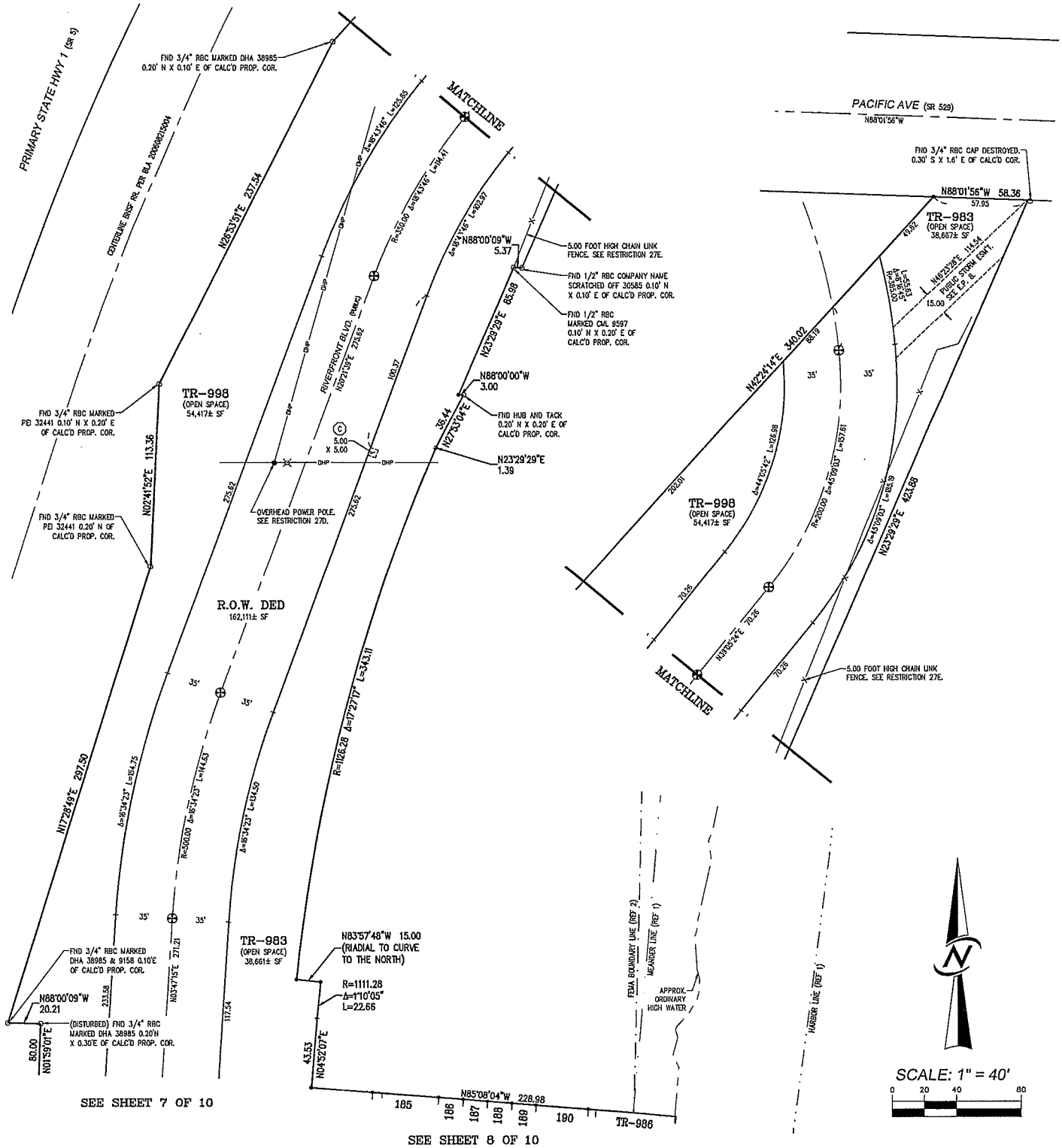
CITY OF EVERETT, SNOHOMISH COUNTY, WASHINGTON



LEGEND

- ○ FOUND SURVEY MARKER AS NOTED.
- • SET 1/2" REBAR WITH YELLOW PLASTIC CAP STAMPED "CORE LS 41299"
- ⊕ 4" CONCRETE MONUMENT WITH 2" BRASS DISK STAMPED "CORE LS 41299" IN MONUMENT CASE.

GLENN R. SPRAGUE — STATE OF WASHINGTON — 41299 — REGISTERED PROFESSIONAL LAND SURVEYOR

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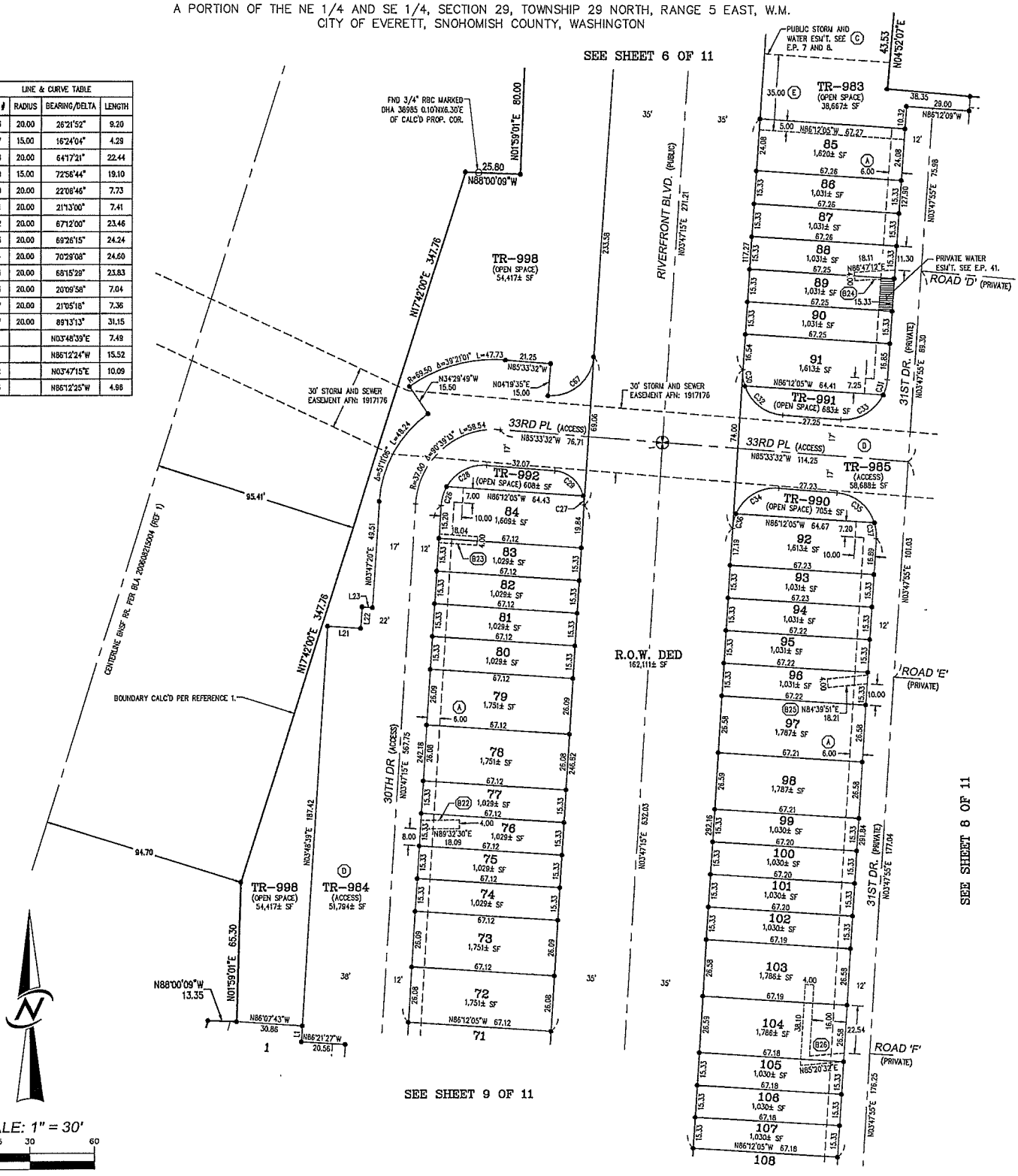
CITY OF EVERETT, SNOHOMISH COUNTY, WASHINGTON

SEE SHEET 6 OF 11

LINE & CURVE TABLE			
TAG #	RADIUS	BEARING/DELTA	LENGTH
C26	20.00	26°21'52"	9.20
C27	15.00	16°24'04"	4.29
C28	20.00	64°17'21"	22.44
C29	15.00	72°56'44"	19.10
C30	20.00	22°08'46"	7.73
C31	20.00	21°13'00"	7.41
C32	20.00	67°12'00"	23.46
C33	20.00	69°26'15"	24.24
C34	20.00	70°29'08"	24.60
C35	20.00	68°15'29"	23.83
C36	20.00	20°09'58"	7.04
C37	20.00	21°05'18"	7.36
C67	20.00	89°13'13"	31.15
L1		N03°48'39"E	7.49
L21		N86°12'24"W	15.52
L22		N03°47'15"E	10.09
L23		N86°12'25"W	4.98



SCALE: 1" = 30'

0 15 30 60

LEGEND

- (A) JOINT UTILITY EASEMENT. SEE E.P. 1.
- (B#) PRIVATE STORM WATER EASEMENT. SEE E.P. #.
- (D) CITY OF EVERETT ACCESS & UTILITY EASEMENT. SEE E.P. 6.
- (E) PRIVATE STORM WATER/RAIN GARDEN EASEMENT. SEE E.P. 9.
- E.P. EASEMENT PROVISION.
- PRIVATE WATER EASEMENT. SEE E.P. #.
- FOUND SURVEY MARKER AS NOTED.
- SET 1/2" REBAR WITH YELLOW PLASTIC CAP STAMPED "CORE LS 41299"
- 4" CONCRETE MONUMENT WITH 2" BRASS DISK STAMPED "CORE LS 41299" IN MONUMENT CASE.

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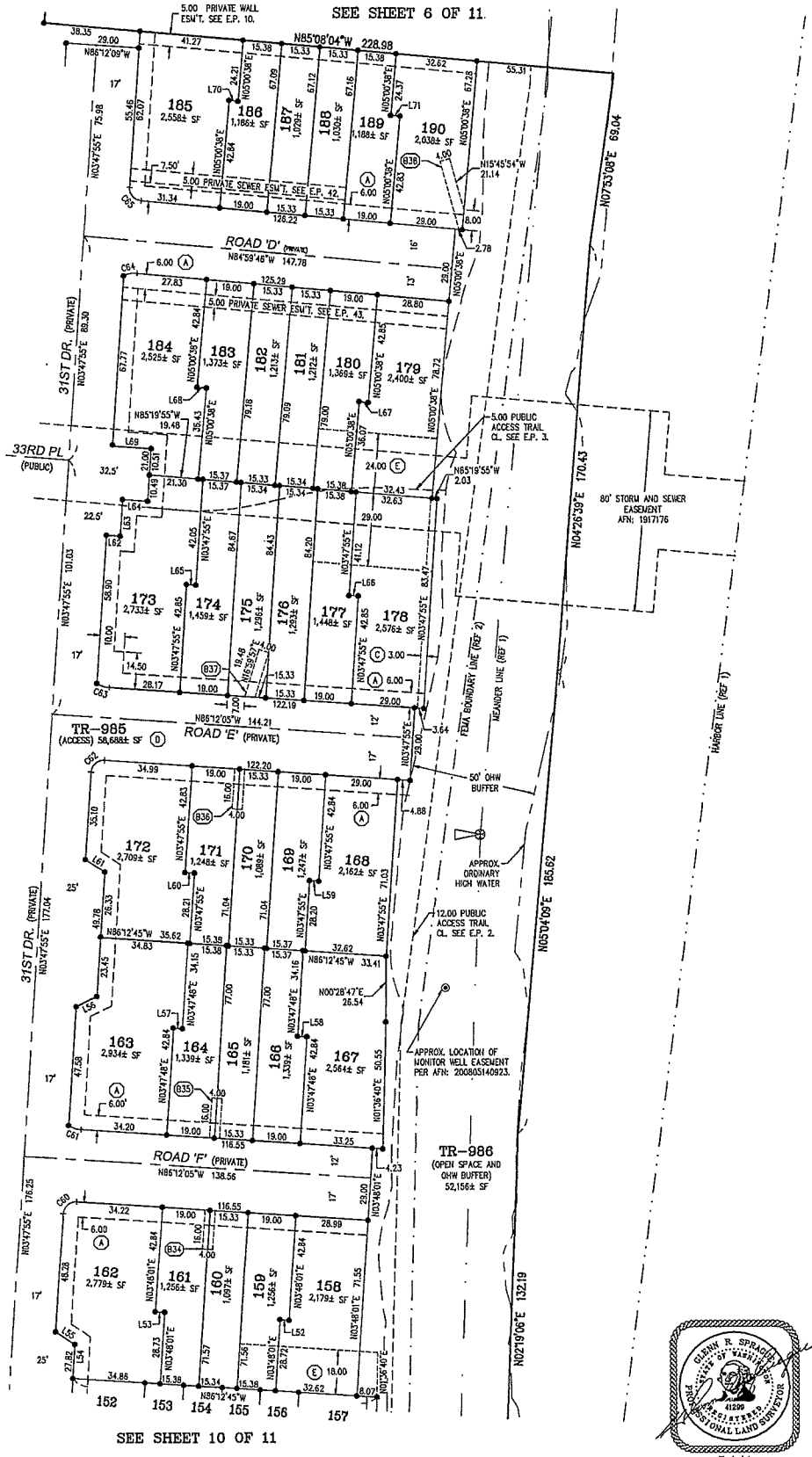

SEE SHEET 7 OF 11

SEE SHEET 10 OF 11

LINE & CURVE TABLE			
TAG #	RADIUS	BEARING/DELTA	LENGTH
C60	5.00	90°00'39"	7.85
C61	10.01	29°59'56"	5.24
C62	5.00	90°00'39"	7.85
C63	10.00	30°01'02"	5.24
C64	10.00	31°12'23"	5.45
C65	5.00	88°47'37"	7.75
L52		N86°11'59"W	3.63
L53		N86°11'59"W	3.63
L54		N03°47'55"E	13.68
L55		N56°13'24"W	9.24
L56		N63°47'55"E	9.24
L57		N86°12'12"W	3.63
L58		N86°12'12"W	3.62
L59		N86°11'59"W	3.63
L60		N86°11'59"W	3.63
L61		N56°12'05"W	9.24
L62		N86°11'54"W	5.50
L63		N03°47'55"E	14.50
L64		N86°11'54"W	10.00
L65		N86°12'05"W	3.62
L66		N86°12'05"W	3.63
L67		N84°59'22"W	3.62
L68		N84°59'22"W	3.63
L69		N86°11'54"W	15.50
L70		N84°59'22"W	3.62
L71		N84°59'22"W	3.63

LEGEND

- (A) JOINT UTILITY EASEMENT. SEE E.P. 1.
- (B##) PRIVATE STORM WATER EASEMENT. SEE E.P. #.
- (C) CITY OF EVERETT WATER EASEMENT. SEE E.P. 7.
- (D) CITY OF EVERETT ACCESS & UTILITY EASEMENT. SEE E.P. 6.
- (E) PRIVATE STORM WATER/RAIN GARDEN EASEMENT. SEE E.P. 9.
- ● SET 1/2" REBAR WITH YELLOW PLASTIC CAP STAMPED "CORE LS 41299".

E.P. EASEMENT PROVISION.

OHW ORDINARY HIGH WATER.

MEANDER CORNER.

N

SCALE: 1" = 30'

0 15 30 60

7-1-16

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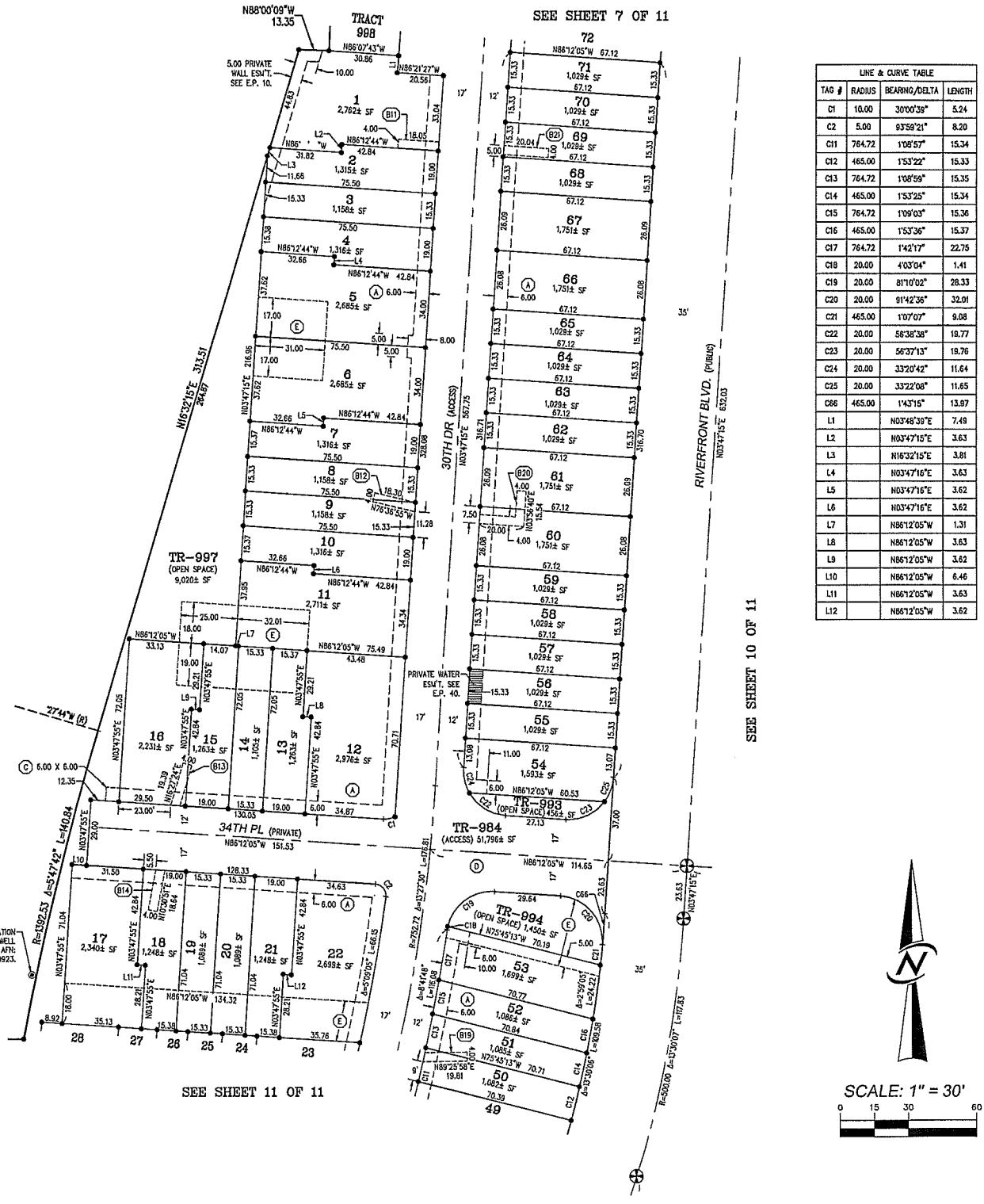

LINE & CURVE TABLE			
TAG #	RADIUS	BEARING/DELTA	LENGTH
C1	10.00	30°00'39"	5.24
C2	5.00	93°59'21"	8.20
C11	764.72	1°08'57"	15.34
C12	465.00	1°53'22"	15.33
C13	764.72	1°08'59"	15.35
C14	465.00	1°53'25"	15.34
C15	764.72	1°09'03"	15.36
C16	465.00	1°53'36"	15.37
C17	764.72	1°42'17"	22.75
C18	20.00	4°03'04"	1.41
C19	20.00	81°10'02"	28.33
C20	20.00	91°42'36"	32.01
C21	465.00	1°07'07"	9.08
C22	20.00	56°36'38"	19.77
C23	20.00	56°37'13"	19.76
C24	20.00	33°20'42"	11.64
C25	20.00	33°22'08"	11.65
C66	465.00	1°43'15"	13.97
L1		N03°48'39"E	7.49
L2		N03°47'15"E	3.63
L3		N16°32'15"E	3.81
L4		N03°47'16"E	3.63
L5		N03°47'16"E	3.62
L6		N03°47'16"E	3.62
L7		N86°12'05"W	1.31
L8		N86°12'05"W	3.63
L9		N86°12'05"W	3.62
L10		N86°12'05"W	6.46
L11		N86°12'05"W	3.63
L12		N86°12'05"W	3.62

LEGEND

- (A) JOINT UTILITY EASEMENT. SEE E.P. 1.
- (B##) PRIVATE STORM WATER EASEMENT. SEE E.P. #.
- (C) CITY OF EVERETT WATER EASEMENT. SEE E.P. 7.
- (D) CITY OF EVERETT ACCESS & UTILITY EASEMENT. SEE E.P. 6.
- (E) PRIVATE STORM WATER/RAIN GARDEN EASEMENT. SEE E.P. 9.
- (R) RADIAL BEARING
- E.P. EASEMENT PROVISION.
- PRIVATE WATER EASEMENT. SEE E.P. #.
- SET 1/2" REBAR WITH YELLOW PLASTIC CAP STAMPED "CORE LS 41299"
- 4" CONCRETE MONUMENT WITH 2" BRASS DISK STAMPED "CORE LS 41299" IN MONUMENT CASE.

GLENN R. SPRAGUE — STATE OF WASHINGTON — 41299 — REGISTERED PROFESSIONAL LAND SURVEYOR

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SEE SHEET 7 OF 11

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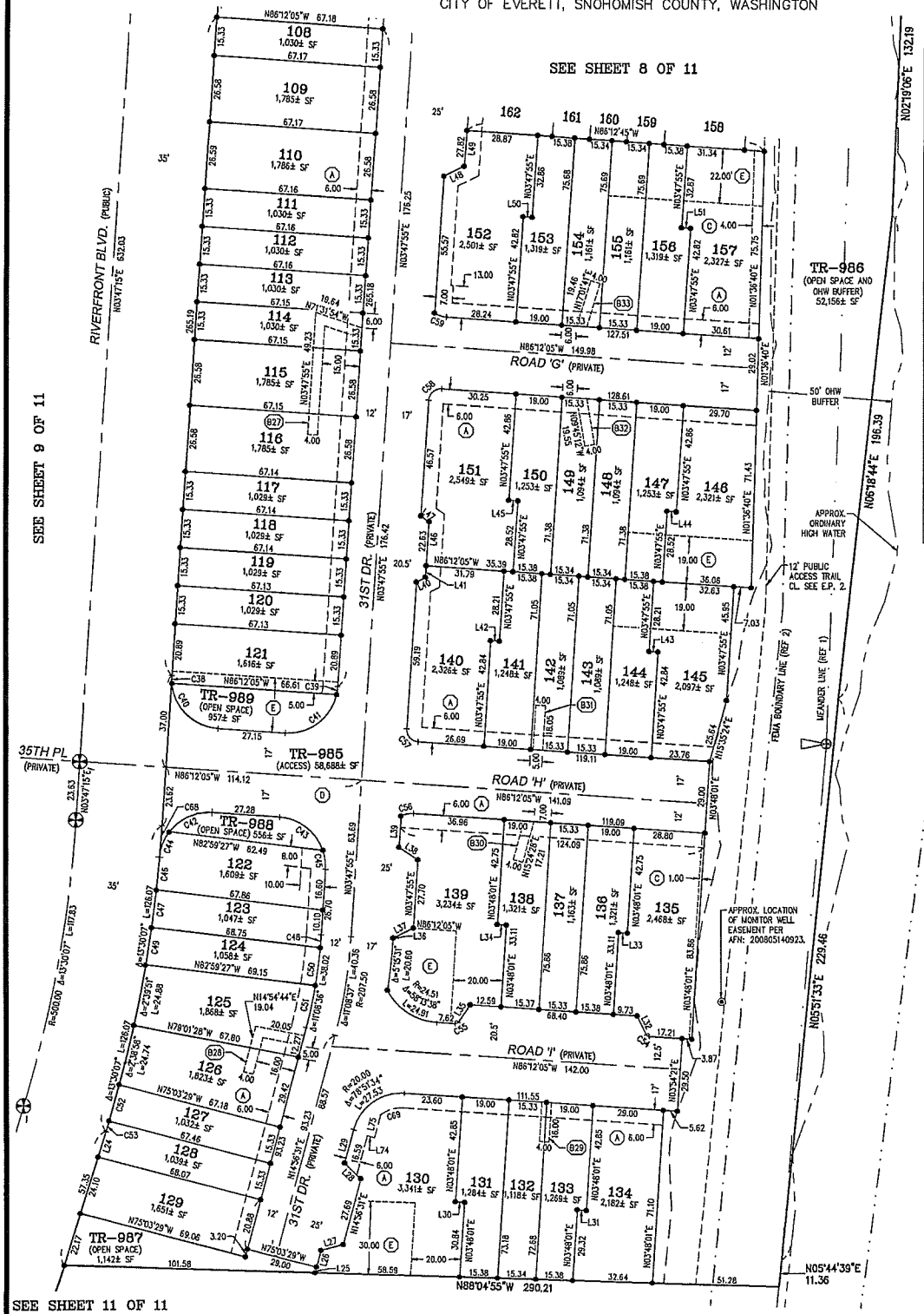

SCALE: 1" = 30'
0 15 30 60

LINE & CURVE TABLE			
TAG #	RADIUS	BEARING/DELTA	LENGTH
C38	20.00	9°11'11"	3.21
C39	19.99	9°12'15"	3.21
C40	20.00	80°48'05"	28.21
C41	19.99	80°48'24"	28.20
C42	20.00	56°13'14"	19.62
C43	20.00	67°36'31"	23.60
C44	20.00	32°24'31"	11.31
C45	20.00	22°21'50"	7.81
C46	535.00	1°25'17"	13.27
C47	535.00	1°38'32"	15.33
C48	195.50	1°32'23"	5.25
C49	535.00	1°38'36"	15.34
C50	195.50	4°29'42"	15.34
C51	195.50	5°06'31"	17.43
C52	535.00	1°38'33"	15.34
C53	535.00	0°27'25"	4.27
C54	1.50	60°00'50"	1.57
C55	1.50	59°59'11"	1.57
C56	9.98	30°01'39"	5.23
C57	4.99	89°59'21"	7.84
C58	5.01	90°00'39"	7.87
C59	10.02	29°58'32"	5.24
C68	535.00	1°22'55"	12.90
C69	14.00	40°38'41"	9.93

LINE TABLE		
LINE #	BEARING	LENGTH
L24	N17°17'22"E	11.08
L25	N14°56'31"E	2.46
L26	N14°56'31"E	7.14
L27	N74°57'11"E	9.24
L28	N45°04'08"W	9.24
L29	N14°56'31"E	14.09
L30	N86°11'59"W	3.63
L31	N86°11'59"W	3.63
L32	N26°11'15"W	8.37
L33	N86°11'59"W	3.63
L34	N86°11'59"W	3.63
L35	N33°48'45"E	8.37
L36	N03°47'55"E	0.62
L37	N63°47'55"E	9.24
L38	N56°13'24"W	9.24
L39	N03°47'55"E	12.79
L40	N63°47'16"E	4.04
L41	N03°47'55"E	4.84
L42	N86°12'05"W	3.62
L43	N86°12'05"W	3.62
L44	N86°12'05"W	3.62
L45	N86°12'05"W	3.62
L46	N03°47'55"E	17.79
L47	N56°13'24"W	4.04
L48	N63°47'55"E	9.24
L49	N03°47'55"E	14.14
L50	N86°12'05"W	3.62
L51	N86°12'05"W	3.63
L74	N75°03'29"W	3.00
L75	N14°56'31"E	9.62

LEGEND

- (A) JOINT UTILITY EASEMENT. SEE E.P. 1.
- (B##) PRIVATE STORM WATER EASEMENT. SEE E.P. #.
- (C) CITY OF EVERETT WATER EASEMENT. SEE E.P. 7.
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MEANDER CORNER.

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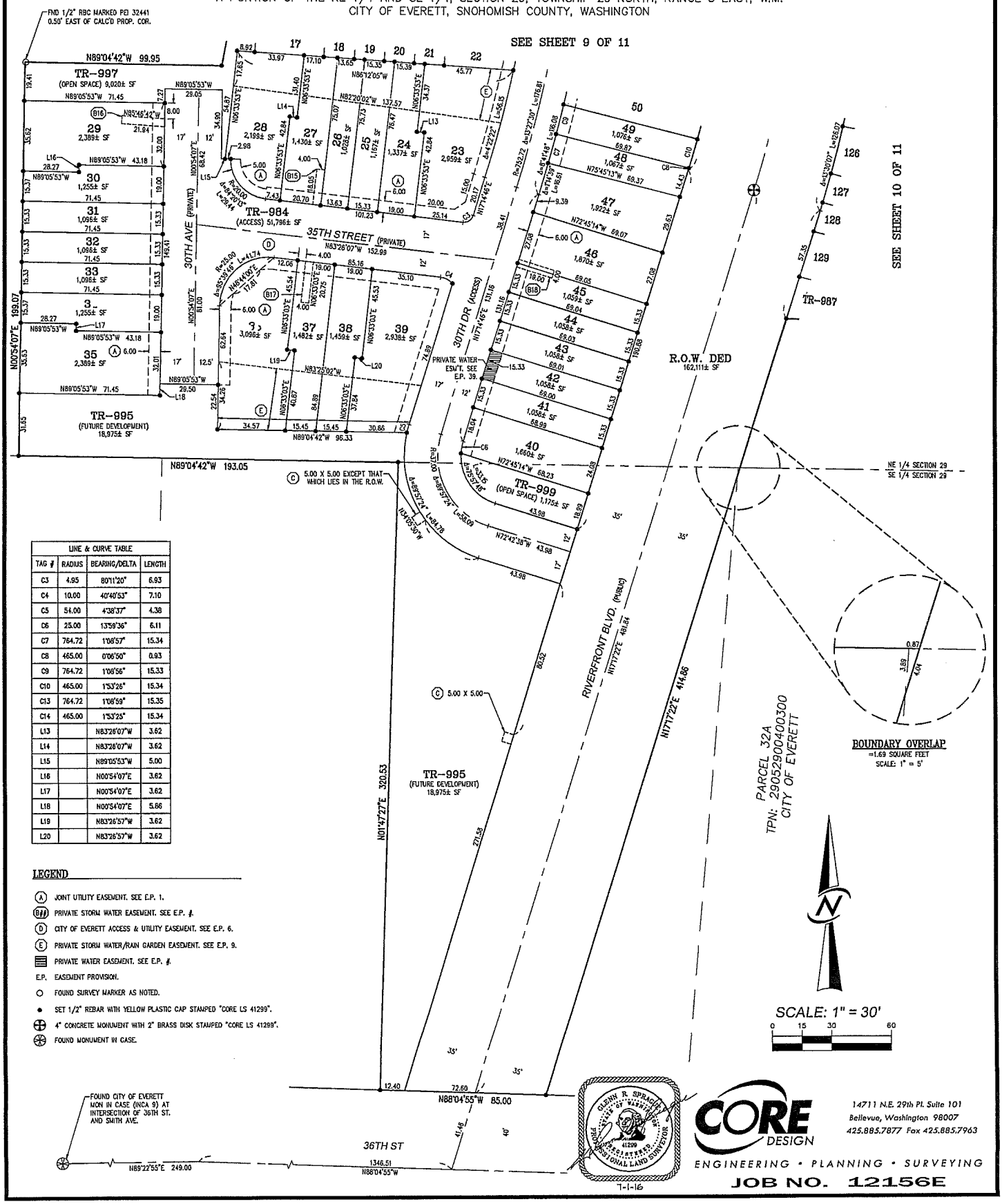

LINE & CURVE TABLE			
TAG #	RADIUS	BEARING/DELTA	LENGTH
C3	4.95	80°11'20"	6.93
C4	10.00	40°40'53"	7.10
C5	54.00	4°38'37"	4.38
C6	25.00	13°59'36"	6.11
C7	764.72	1°08'57"	15.34
C8	465.00	0°06'50"	0.93
C9	764.72	1°08'56"	15.33
C10	465.00	1°53'26"	15.34
C13	764.72	1°08'59"	15.35
C14	465.00	1°53'25"	15.34
L13		N83°26'07"W	3.62
L14		N83°26'07"W	3.62
L15		N89°05'53"W	5.00
L16		N00°54'07"E	3.62
L17		N00°54'07"E	3.62
L18		N00°54'07"E	5.86
L19		N83°26'57"W	3.62
L20		N83°26'57"W	3.62

LEGEND

- (A) JOINT UTILITY EASEMENT. SEE E.P. 1.
- (B#) PRIVATE STORM WATER EASEMENT. SEE E.P. #.
- (D) CITY OF EVERETT ACCESS & UTILITY EASEMENT. SEE E.P. 6.
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- ⊕ 4" CONCRETE MONUMENT WITH 2" BRASS DISK STAMPED "CORE LS 41299".
- ⊛ FOUND MONUMENT IN CASE.

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JOB NO. 12156E

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Wholesale Water Delivery Contract with the Tulalip Tribes for 2016-2066

	Briefing	COUNCIL BILL #	
	Proposed Action	Originating Department	Public Works
	Consent	Contact Person	Jim Miller
X	Action	Phone Number	425-257-8880
	First Reading	FOR AGENDA OF	October 19, 2016
	Second Reading		
	Third Reading		
	Public Hearing		
	Budget Advisory		

Initialed by:
Department Head
CAA
Council President

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
Smith Island	2005 Agreement	Contract	Public Works, Legal

Amount Budgeted	-0-	Account Number:
Expenditure Required	-0-	
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
The City of Everett and the Tulalip Tribes entered into a settlement agreement in 2005 that provided for the construction of a water pipeline and the delivery of water through this pipeline. The Tulalip Water Pipeline has been built in segments between Everett's water transmission lines (near Highway 2) and Quilceda Village on the Tulalip Reservation. Segment 2 is the last segment and it is scheduled for completion in November 2016.

The 2005 agreement also provided that the City shall be prepared to deliver up to an annual average of 30 Million Gallons per day to the Tulalip tribes under a long term water contract. This 50-year wholesale water delivery contract has been negotiated with the Tulalip Tribes.

RECOMMENDATION (Exact action requested of Council):
Authorize the Mayor to sign a Wholesale Water Delivery Contract for 2016-2066 with the Tulalip Tribes.

CITY OF EVERETT AND THE TULALIP TRIBES

WHOLESALE WATER DELIVERY CONTRACT
2016 - 2066

THIS WHOLESALE WATER DELIVERY CONTRACT ("Contract,,) is made and entered into by and between the City of Everett, a municipal corporation of the State of Washington, hereinafter referred to as "City,, or "Everett," and THE TULALIP TRIBES OF WASHINGTON, successors-in-interest to the Snohomish, Snoqualmie, Skykomish and other allied Native American tribes and bands signatory to the 1855 Treaty of Point Elliott, a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended, hereinafter referred to as "Tulalip". Each of Everett and Tulalip is a "Party,,, and collectively, the "Parties,,.

WHEREAS, Everett owns and operates a water supply system located in Snohomish County, Washington; Said system has regional supply capability for domestic, commercial and industrial water consumption; and

WHEREAS, pursuant to RCW 35.92.170, RCW 35.92.200 and RCW 39.94, Everett is authorized to enter into contracts with other municipalities to supply said municipalities with water; Pursuant to WAC 248-54, Everett has prepared a Water System Plan identifying certain areas of Snohomish County as being within its long-range wholesale water supply service area; and

WHEREAS, Tulalip owns and operates a water supply system on the Tulalip Indian Reservation in Snohomish County, Washington, and distributes said water on a retail basis to domestic, commercial and industrial customers within a service area identified in its Water System Plan adopted pursuant to applicable law; and

WHEREAS, Tulalip and Everett entered a 2005 Agreement for Settlement, Water Supply and Water Delivery System ("2005 Agreement,,). The 2005 Agreement provides for the development of a 36-inch (now 36 and 42-inch) water transmission line for a new point of water delivery for Tulalip use ("Project,,). Subsequently, Everett and Tulalip entered a 2006 Interlocal Agreement to organize a Joint Board to oversee Project development. This Contract is to govern the terms of the relationship of the parties upon the availability of water to the Tribe from the Project; and

WHEREAS, this Contract is in addition to such other contracts that exist among Tulalip and Everett, such as the 2005 Agreement and the 1991 Everett and JOA Participants' Water

Supply Contract (the "1991 Contract,,). Except as otherwise set forth in this Contract, other agreements and contracts between the Parties remain in effect.

NOW, THEREFORE, for the mutual benefits to be derived, the parties agree as follows:

1. Delivery of Water. Everett hereby agrees to deliver water to Tulalip and Tulalip agrees to pay Everett for the delivery and treatment of water.

2. Point of Delivery. Everett shall deliver water to Tulalip at agreed connection point along Everett's Transmission Pipeline at Everett's master meter system on the south side of Union Slough ("Point of Delivery,,). The actual point of delivery at the connection point shall be deemed to be the upstream flange of the valve downstream of the master meter and check valve.

3. Quantity of Water. Everett and Tulalip agree that each have made, and will continue to make, significant capital investments in water delivery facilities which are interdependent and that coordinated planning will be required throughout the term of this contract to maximize public benefits and minimize costs. Everett shall not be responsible for storage for Tulalip's reservation system storage except as it relates to Everett's existing storage at Lake Chaplain and uninterrupted delivery of water at the Point of Delivery in accordance with the 2005 agreement and Sections 6 and 10 of this contract. It is understood that Tulalip and consumers of water from Tulalip may reach an average annual demand of 30.0 million gallons per day (MGD) and peak period demand of 36.0 million gallons per day (MGD) before the expiration of this Contract. Estimated average daily demands and peak day demands of Tulalip and its major customers for the near future are shown on Exhibit A attached hereto. Everett's facilities have, or will have in the future, the capacity to deliver water for Tulalip's water quantity demands as shown in Exhibit A or updated projections to be provided by the Tulalips at least every five years after the effective date of this contract. Once the Tulalip Water Pipeline is connected to the City's transmission pipelines, the maximum amount of water to be delivered by the City to the Tulalip under this Contract will in no case exceed 30 MGD average annual rate or 36 MGD during peak periods.

Nothing herein, however, shall be construed as obligating Tulalip to take or purchase any minimum quantity of water from Everett at any time.

4. Quality of Water. Everett shall be responsible for meeting state and federal standards for safe, high-quality drinking water at the point of delivery. All water supplied by Everett for use or sale by Tulalip shall be delivered upon the express condition that after it has passed the point of delivery the same is under the exclusive control of Tulalip, and Everett shall not be liable for any damages or loss resulting from degradation of water quality which may occur beyond said point. Everett shall not be responsible for changes in water quality or operating problems which may result from mixing of different sources of water in Tulalip's system or in systems served by Tulalip. Tulalip shall provide means to assure that water will not backflow into the Everett water system.

Everett shall make available to Tulalip, during Everett's regular business hours, all test and monitoring data and reports of Everett drinking water quality. Everett shall send to Tulalip its periodic reports of drinking water quality, prepared by Everett in conformance with requirements of the Safe Drinking Water Act or State Department of Health regulations.

5. Rates and Charges. Rates for water delivery service under this Contract shall be established by Everett ordinance, as may be amended. Tulalip will receive water service under the Everett's "east of river,, ordinance rate or successor rate. (For purposes of reference, this rate for 2016 is set forth in Section 14.16.713.B.2.b(1) of the Everett Municipal Code.) All rates shall be based on accepted standard practice for public water utility rate-making, such as AWWA M1 Rate Manual or successor manual or other commonly-used industry standards, provided:

A. Unless Everett is mandated to pay or otherwise remit a State utility tax by Washington State law, no rate or charge under this Contract shall include State utility tax or adjustment for State utility tax.

B. As of the date of this Contract, Everett, in accordance with City Council Resolution 2285, charges the Everett utility an annual PILOT payment equal to 6% of utility revenues. This PILOT is included in the "east of river,, ordinance rate, as it is included in all other wholesale water rates. With respect to the Everett PILOT, the parties agree:

1. The rate charged under this Contract may include such an Everett PILOT, so long as it is the same percentage included in the rate of other wholesale customers and so long as the PILOT (alone or in combination with any successor tax or fee to the PILOT or any other Everett taxes or fees on Utility revenues) included in the rate charged to Tulalip during the initial 50-year term of this Contract does not exceed six percent (6%).

2. For the entire term of the Contract (including the initial 50-year term of this Contract and renewal term) and subject to Section 5.D below, neither Tulalip nor Everett will, so long as the PILOT included in the Tulalip rate does not exceed 6%, challenge the binding character of the provisions made in this Section 5.B addressing the PILOT or otherwise seek to either eliminate or reduce the PILOT from the Tulalip rate or change the 50-year 6% cap that this Section B imposes on it. If after the initial 50-year term of this Contract, Everett increases the PILOT in the Tulalip rate in excess of 6%, then Tulalip may challenge the PILOT, but the remedy allowed in the challenge to the PILOT by Tulalip shall be solely limited to the remedy of reducing the PILOT to 6%, and no retroactive remedy shall be available.

C. Everett's outside rate multiplier is a percentage surcharge on water service outside of Everett city limits. As of the date of this Contract, this multiplier is 20% for the "east of river,, rate. Regardless of whether such multiplier is later increased in the Everett Municipal Code or elsewhere, the rate charged to Tulalip, regardless of whether it is the "east of river,, rate or successor rate, will never include such a multiplier in excess of 20%.

D. Everett contracts with customers other than Tulalip for the provision of water supply and/or water delivery services. If after the day this Contract is signed, Everett allows a wholesale customer (whether current or future Everett customer) who was charged the "east of river,, or successor ordinance rate during the term of this Contract to receive service substantially similar to that under this Contract at a lower rate and/or charge than charged now or in the future under this Contract, then such lower rate shall apply to this Contract so that the rate and/or charge to Tulalip under this Contract is equal to or less than the rate charged to such other Everett customer(s).

E. Everett shall not charge an Everett tax to the Tulalip Tribes for water delivered under this contract. Everett charges on Everett utility revenues are covered by 5.B. above.

6. Payment. On a monthly basis, Everett shall bill Tulalip for water delivered to Tulalip through pipeline master meter. Said bills shall be payable within thirty (30) days after receipt of the invoice. Delinquent bills shall accrue interest at the rate of twelve percent (12%) per annum, but not to exceed 1% per month, for any delinquency greater than sixty (60) days. If payments are delinquent by greater than 180 days, the matter shall be submitted to dispute resolution. If payments are delinquent by more than one year, the City has the right to shut off service until paid in full.

7. Resale or Distribution of Water. After water has passed the points of delivery and has entered Tulalip's connection transmission pipeline, said water becomes subject to Tulalip's exclusive authority, except as otherwise provided in this Contract:

A. After the water has passed the point of delivery and has entered the Tulalip's portion of the pipeline, Tulalip may, at its sole discretion, use the water delivered by the City for any purpose allowed under applicable law in the Tribal Service Area as shown in Exhibit B, now existing or as may be amended in the future. Tulalip shall have sole discretion over resale to Tribal enterprises and other users within the Tribal Service Area. If a planned new connection is for delivery of water outside of the Tribal Service Area, greater than 12 inches, and supplies more than one million gallons per day (1 MGD), then the Tulalip shall first obtain approval from Everett for said connection. Everett's approval shall not be unreasonably withheld and shall be based on the water supply impacts to Everett water system caused by said connection.

B. Tulalip will provide information to the City of Everett as may be needed to meet the City's reporting requirements approved by the Washington State Department of Health, if appropriate.

8. Term of Contract. The term of this Contract shall be fifty (50) years from the date of its mutual acceptance by the parties to be automatically renewed for an additional fifty (50) years unless (a) the Parties agree mutually not to renew this water contract, or (b) the City fails to

substantially succeed in the water application for the permitting of a 200 cfs water right (water right application No. 13219, dated 15 December 1954).

9. Construction, Operation and Maintenance of Capital Improvements. Tulalip shall construct or cause to be constructed all capital improvements to its water system and shall individually own all capital improvements downstream from the points of delivery. Tulalip shall assume exclusive responsibility for the operation, maintenance and repair of the same; all construction, operation, and maintenance and repairs shall be in strict compliance with standards approved by the US Public Health Service as relevant and applicable regulatory Washington State Department of Health authority.

Tulalip shall annually provide to Everett a water system report to include number of customers, peak use and other information useful in optimizing joint operations.

10. Continuity of Service.

A. Continuity of service to Tulalip shall be maintained by Everett in the same manner as service to the Everett's businesses and residences. In the event of a general emergency or water shortage affecting the Everett Water Supply System requiring restrictions on the delivery of water, general restrictions placed upon deliveries to Tulalip shall be determined by a similar method to that used for restricting deliveries to Everett's retail consumers. In the event of localized emergency problems, temporary service interruptions may result.

B. It is recognized by both parties that emergency conservation measures may have to be implemented by Everett on a regional basis in order to meet an emergency condition. Tulalip shall assist and support such emergency conservation measures.

C. Everett shall provide oral and electronic mail notice to Tulalip, and may temporarily interrupt or reduce deliveries of water to Tulalip, if Everett determines that such interruption or reduction is necessary or reasonable in case of system emergencies or in order to install equipment, make repairs, replacements, investigations and inspections or perform other maintenance work on Everett's water system or those parts of the system supplying Tulalip. Except in cases of emergency, and in order that Tulalip's operations not be unreasonably interfered with, Everett shall give Tulalip reasonable written notice of any such interruption or reduction, the reason therefore, and the probable duration thereof. Any such service interruption shall be for the shortest possible period in order that the public health and welfare of Tulalip is not jeopardized.

11. Indemnity.

A. Nothing herein shall be interpreted to create indemnity or cross indemnity agreements between the parties. In the event of claim, loss or liability alleged to have arisen out of the ownership or operation of Everett's water supply system or Tulalip's water supply facilities,

the parties agree that their liability shall be borne in accordance with and as determined under federal and Washington State laws.

B. Notwithstanding any other provision of this Contract, neither Tulalip nor Everett shall be liable under or pursuant to this Contract for indirect, incidental, special, exemplary or consequential damages, including but not limited to damages for lost profits or benefits, even if such party has been advised of the possibility or existence of such damages.

12. Uncontrollable Forces or State or Federal Law Changes. Neither of the parties hereto shall be considered to be in default in respect to any obligations hereunder if prevented from fulfilling such obligations by reason of uncontrollable forces or material changes in state or federal law. Parties rendered unable to fulfill any obligation hereunder by reason of an uncontrollable force or material change in state or federal law shall exercise due diligence to deal with such uncontrollable force with all reasonable dispatch and to take actions consistent with the purpose of this Contract.

13. Assignment; Successors Bound. Neither this Contract nor any right or privilege herein shall be assigned by any party without the written consent of the other party.

14. Notice. Formal notice and official communications between the parties regarding this Contract shall be sent by first class mail as follows:

TO: Everett
Mayor, City of Everett
2930 Wetmore Avenue
Everett, WA 98201

TO: Tulalip
Chairman, Tulalip Tribes of Washington
6406 Marine Drive
Marysville, WA 98-271-4032

15. Relationship of the Parties. This Contract and the Agreement for Settlement, Water Supply, and Water Delivery System Between the Tulalip Tribes of Washington, and the City of Everett dated 16 September 2005 describes the entire relationship of the parties with regard to the subject matter herein concerned. Except as maybe explicitly provided otherwise herein, the Parties are independent entities and shall not be deemed to be partners, joint ventures, principals, or agents of each other for any purpose whatsoever. Each party shall have and maintain sole and complete control over all of its employees, agents, and operations. Except as may otherwise be explicitly provided herein, or in separate agreement, each and all of the obligations, responsibilities, and liabilities of the parties under and in connection with this Contract are several, and not joint, and no separate legal or administrative entity will be created to fulfill the purposes of this Contract.

16. Dispute Resolution. Any dispute under or in connection with this Contract shall be governed by the General Governmental Dispute Resolution Process of Part K of the Agreement for Settlement, Water Supply, and Water Delivery System Between the Tulalip Tribes of Washington, and the City of Everett dated 16 September 2005; provided, that should

either party file suit in any judicial forum pursuant to that Part K, that party shall have recourse first to the Federal District Court for the Western District of Washington, and only if that Court rules that it lacks subject matter jurisdiction will any party seek relief in an alternative judicial forum.

17. Miscellaneous.

A. 1991 Contract. The 1991 Contract remains in full force and effect under its terms. Water received by Tulalip from Everett, through the Marysville system, shall continue to be available for use by Tulalip consistent with and subject to the terms of the 1991 Contract.

B. 2005 Agreement. Except as otherwise provided in this Contract, the 2005 Agreement shall apply to and be integrated with this Contract.

C. 2006 Interlocal Agreement. The 2006 Interlocal Agreement shall remain in effect only until Project completion, consistent with the terms of that Agreement.

D. Contract Controls. In the event of conflict, ambiguity or inconsistency, the provisions of this Contract shall control over other agreements and contracts in which Everett and Tulalip are both parties.

E. Headings. The headings used herein are for convenience of reference only and shall not affect the meaning or interpretation of this Contract.

F. No Third Party Beneficiaries. Except as expressly set forth in this Contract; none of the provisions of this Contract shall inure to the benefit of or be enforceable by any third party.

G. Waivers. Except as otherwise provided herein or as agreed by the parities, no provision of this Contract may be waived except as documented or confirmed in writing. Any waiver at any time by a party of its right with respect to a default under this Contract, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter. Either party may waive any notice or agree to accept a shorter notice than specified in this Contract. Such waiver of notice or acceptance of shorter notice by a party at any time regarding a notice shall not be considered a waiver with respect to any subsequent notice required under this Contract.

H. Invalid Provision. The invalidity or unenforceability of any provision of this Contract shall not affect the other provisions hereof, and this Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

I. Amendment. No change, amendment or modification of any provision of this Contract shall be valid unless set forth in a written amendment to this Contract signed by

both parties.

J. Assignment and Subcontracts. Neither party may assign this Agreement, or assign or subcontract all or any part of such party's rights or obligations under this Contract, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Without in any way limiting the foregoing, this Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

K. Further Assurances. Each party hereto covenants and agrees to do all things necessary or advisable, including but not limited to the preparation, execution, delivery and recording of any instruments or agreements, in order to confirm and better assure the intent and purposes of this Contract.

L. Counterparts. This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

M. Signature Authority. Each of the undersigned signatories represents and warrants that he or she has all necessary and proper authorization to execute and deliver this Contract on behalf of the party on behalf of which he or she is signing.

N. Rule of Construction. No provision of the Contract shall be construed in favor of or against either of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which such provision or any other provision or provisions of this Contract is or are inconsistent with any prior draft thereof.

Exhibits: A. Tulalip Water Demand Projections
B. Tulalip Tribal Service Area

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their proper officers on the _____ day of_____2016

CITY OF EVERETT,
a Washington municipal corporation

By: _____
Name: Ray Stephanson
Title: Mayor

Approved as to form:

_____
City Attorney

Attest:

_____
City Clerk

THE TULALIP TRIBES OF WASHINGTON

By: Melvin Sheldon
Name: Melvin Sheldon
Title: Chairman

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Water Filtration Plant Programmed Logic Controllers Replacement Project Change Order No. 1 with Seahurst Electric, Inc.

____	Briefing
____	Proposed Action
____	Consent
X	Action
____	First Reading
____	Second Reading
____	Third Reading
____	Public Hearing
____	Budget Advisory

COUNCIL BILL #	
Originating Department	Public Works
Contact Person	Mike Robinson
Phone Number	(425) 257-8884
FOR AGENDA OF	October 26, 2016

Initialed by:
Department Head ____
CAA dlb
Council President ____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
6133 Lake Chaplain Road, Sultan WA	11/19/14 Award	Change Order No. 1	Public Works`

Amount Budgeted	$1,418,189.59	
Expenditure Required	$299,512.32	Account Number(s): UP 3361
Budget Remaining	$299,512.32	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
The Water Filtration Plant Programmed Logic Controllers (PLC) Replacement Project includes replacing a PLC system that is beyond service life and no longer supported in the industry.

Change Order No. 1 adds five new bid items to the contract as described in pages 3 & 4 of this change order. These bid items are for changes in the following areas: emergency power back up, programming services, additional labor, additional facility and equipment rental, and contract suspension overhead.

520 cumulative days are added to the contract with Change Order No. 1.

A breakdown of the contract amount is as follows:

Original Contract Amount	$1,118,677.27
Change Order #1	$299.512.32
Revised Contract Amount	$1,418,189.59

RECOMMENDATION (Exact action requested of Council):
Authorize the Mayor to sign Change Order No.1 with Seahurst Electric, Inc. for the Water Filtration Plant Programmed Logic Controllers Replacement Project in the additional amount of $299,512.32 including Washington State sales tax.

CITY OF EVERETT
Change Order

Project Title	Water Filtration Plant Programmed Logic Controllers Replacement Project
Department	Public Works
Work Order No.	UP 3361
Contractor:	Seahurst Electric, Inc.
Contract Award Date:	December 8, 2014
City Staff Contact:	Mike Robinson
Change Order No.	1
Change Order Effective Date	November 14, 2016

CONTRACT PRICE (Inclusive of Washington State Sales Tax)

Original contract price	$1,118,677.27
Cumulative Amount of prior change orders	$0.00
Total Contract Price including prior change orders	$1,118,677.27
Amount of this Change Order	$299,512.32
Total Contract Price *including* this Change Order	**$ 1,418,189.59**

CONTRACT TIME

Original Contract Duration	270 days
Cumulative adjustment to duration by *prior* change orders	0
Adjustment to duration by *this* change order	520 days
New contract duration by *this* Change Order	790 days

Contractor and City agree as follows:

1. **The scope of Work shall be changed to the extent described in Exhibit A.**

2. **With the exception of Washington State sales tax, the amount of the change order for the changes described in Exhibit A, represents complete compensation for the changes described in Exhibit A, including all direct and indirect costs and impacts. The contract price shall be adjusted as described in this Change Order.**

3. **Everett Municipal Code 3.80.050 sets forth the threshold amounts below which the Mayor or his designee is authorized to direct Contractor to perform additional work. In calculating such threshold amounts, Washington State sales tax, if applicable to the Work, has been considered.**

4. **The duration of the Contract shall be adjusted to the extent described in this Change Order.**

5. **Contractor waives and releases any and all claims arising out of, or related to, this Change Order, the work described in Exhibit A, and all work and actual or constructive changes that occurred or began prior to the date of this Change Order, including, but not limited to, claims for equitable adjustment of time and compensation, delay, impact, overhead, or inefficiencies. This provision does not apply to requests for equitable adjustment of time or price for which the Contractor timely and properly provided notice of a differing site condition, protest, dispute, claim or Contract Claim as required by the Contract Documents. If the Contract Documents establish a time period for notice of a differing site condition, protest, dispute, claim, or Contract Claim that ends after the date of this Change Order, but relates to work performed prior to the date of this Change Order, then this provision does not apply if the Contractor timely and properly submits such notice**

6. **This Change Order only changes the contract between Contractor and City to the extent explicitly provided herein.**

7. **When substantial competition is established the contractor may request the use of the Eichleay Formula for calculating Extended or Unabsorbed Home Office Overhead per section 12.4.3.5 of the contract. The contractor therefore reserves its right to applicable Home Office Overhead and final Bond Costs adjustment.**

CITY		
	Attest:	Approved As to Form:
Mayor Date: _____	City Clerk Date: _____	City Attorney Date: _____
Recommended By:		
Construction Manager (if applicable) Date: _____	Project Engineer (if applicable) Date: _____	Engineering Manager (if applicable) Date: 10/12/16
CONTRACTOR		
By _____ Officer	Date: 10/10/16	

Department Director
Date: 10/17/16

Exhibit A—Description of Changed Work

Change Order #1 adds five (5) each new items to the Contract as follows:

New item #021 – **Additional Uninterruptible Power Supply Capacity,** in the lump sum amount of $37,714.39.

New item #022 – **Programming Services**, in the lump sum amount of $43,059.00

New item #023 – **Additional Labor Cost Impacts**, in the lump sum amount of $159,563.81.

New item #024 – **Additional Rental of Temporary Facilities and Equipment,** in the lump amount of $34,340.85.

New item #025 – **Suspension Overhead Costs**, in the lump sum amount of $24,834.27.

The total increase cost to the contract as a result of adding the above five (5) new items comes to $299,512.32.

JUSTIFICATION:

Item #021 – Additional Uninterruptible Power Supply Capacity. Operational testing of existing UPS system proved inadequate to support PLC operations during utility power loss events. Additional UPS capacity is required to provide a minimum of two hours PLC run time.

Item #022 – Programming Services. This change request is that the City of Everett Utilities Department Water Filtration Plant staff will have the ability to monitor network communication health for all PLCs, VFDs, and Ethernet Switch status. Cost also includes configuring Ethernet topology from a backbone interface system to a ring topology for increased system reliability.

Item #023 – Additional Labor Cost Impacts. Additional 1,065 hours of labor cost for unanticipated electrical engineering field changes performed by the contractor to mitigate negative impacts to Plant operations.

Item #024 – Additional Rental of Temporary Facilities and Equipment. The additional costs are a result in the project requiring an additional 520 day to complete. Project delays were due to extra time required to minimize project impact on Plant operations. The delay includes two project shutdowns for a total of 255 days when demand for water production prevented project work to be performed.

Item #025 - Suspension Overhead Costs. The additional costs are a result in the project requiring an additional 520 day to complete. Contract section 12.4.3.1.1 provides compensation to the contractor in the event of contract suspension for issues not related to contractor performance. This cost includes additional insurance and bonding.

CONTRACT TIME:

By this Change Order #1 the new agreed date for Completion of the work on the Water Filtration Plant Programmed Logic Controllers Replacement Project will be April 15th, 2017.