Everett City Council Agenda
City Council Chambers

Pledge of Allegiance

Roll Call

Approval of Minutes: October 26, 2016

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) Adopt Resolution designating a preferred alternative for supportive housing facility.

Documents:

Resolution Designating Preferred Alternative for Supportive Housing.pdf

(2) CB 1610-45 – 1st Reading – Adopt the Proposed Ordinance establishing rates for Everett sewer service and surface water management, rates for water and filtration for inside and outside City customers, rates for wholesale master meters, and repealing Ordinance Nos. 3417-17 (EMC 14.04.020) and 3299-12 (EMC 14.16.710-13). (3rd and final reading on 11-16-16)

Council Bill No. CB 1610-45

Documents:

sewer service surface water management ordinance.pdf

(3) CB 1610-46 – 1st Reading – Adopt the Proposed Ordinance amending Ordinance 3440-15 (Everett Municipal Code 14.04.025) relating to discounted rates for water and sewer services for low-income, senior residents. (3rd and final reading on 11-16-16)

Council Bill No. CB 1610-46

Documents:

Ordinance repealing ord 3440-15.pdf

PROPOSED ACTION ITEMS:

(4) CB 1610-44 – 2nd 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)

Council Bill No. CB 1610-44

Documents:

Ordinance closing special improvement project titled North Everett Pedestrian.pdf

CONSENT ITEMS:

(5) Adopt Resolution No. ____ authorizing claims against the City of Everett in the amount of $2,957,166.53 for the period of October 15, 2016 through October 21, 2016.

Documents:

Claims Resolution.pdf

(6) Adopt Resolution No. ____ authorizing payroll claims against the City of Everett in the amount of $3,677,050.19 for the period ending October 15, 2016.

Documents:

Payroll Resolution.pdf

(7) Authorize Call for Bids 2016-081 for purchase of Transit uniforms.

Documents:

Transit Uniforms.pdf

(8) Accept the Water Main "P" Replacement Project as complete and authorize the Mayor to sign the Certificate of Completion with Allied Construction Associates, Inc. allowing the release of held retention.

Documents:

Allied.pdf

ACTION ITEMS:

(9) Adopt Resolution No. ___ finding a substantial need for using the 101% limit factor under Chapter 84.55 RCW with regard to the levying of regular property taxes and emergency medical services property taxes, and authorizing the same to be used to fund the City General Fund and the Emergency Medical Services Fund.

Documents:

Property Tax.pdf

(10) CB 1610-43 -3rd and final 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.

Council Bill No. CB 1610-43

Documents:

Water Sewer Revenue bonds Ordinance.pdf

(11) Authorize the Mayor to sign the collective bargaining agreement with Everett Police Management Association for January 1, 2017 through December 31, 2017.

Documents:

Police Management.pdf

(12) Authorize the Mayor or his designee to sign the Washington State Patrol ACCESS User Acknowledgement agreement.

Documents:

ACCESS.pdf

(13) Authorize the Mayor to sign the ATACRAIDS Addendum for SNOPAC Agencies at no cost to the City.

Documents:

ATACRAIDS.pdf

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

Documents:

Swift II.pdf

(15) Authorize the Mayor to sign a Lease Agreement with Workforce Development Council Snohomish County for space at Everett Station.

Documents:

Work Force.pdf

(16) Authorize the Mayor to sign Amendment No. 1 to the Homeland Security Grant Agreement with Snohomish County to receive grant funds to purchase three cargo containers for storing disaster related supplies.

Documents:

Cargo Containers.pdf

(17) Authorize the Mayor to sign Amendment No. 2 to the Professional Services Agreement with Tetra Tech, Inc. For construction engineering support for the Water Filtration Plant Programmed Logic Controllers Replacement Project in the amount of $166,770.00.

Documents:

TetraTech.pdf

PUBLIC HEARING:

2017 BUDGET HEARINGS – 2nd Hearing. The public is welcome to attend.

Executive Session

Adjourn

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EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Resolution designating a preferred alternative for supportive housing facility.

11/2	Briefing	COUNCIL BILL #	
	Proposed Action	Originating Department	Administration
	Consent	Contact Person	Hil Kaman
11/09	Action	Phone Number	425-257-8762
	First Reading	FOR AGENDA OF	11-02-2016
	Second Reading		
	Third Reading		
	Public Hearing		

Initialed by:
Department Head _____
CAA _____
Council President _____

Location **Preceding Action** **Attachments** **Department(s) Approval**

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

DETAILED SUMMARY STATEMENT:

This resolution designates the Evergreen Way property as the preferred alternative for purposes of environmental review under the State Environmental Policy Act (SEPA) and directs staff to conduct the required environmental review.

RECOMMENDATION (Exact action requested of Council): Approve resolution designating a preferred alternative for supportive housing facility

RESOLUTION NO. _____

A RESOLUTION designating certain real property located near the intersection of Berkshire Drive and Evergreen Way as the preferred alternative for development of a 70-unit supportive housing facility

WHEREAS,

A. To address Everett's street level social issues, including homelessness, addiction, and mental illness, the Community Streets Initiative developed a broad range of recommendations for community action.

B. One of the priority recommendation of the Community Streets Initiative Taskforce is expanded use of "housing first" as an evidence based best practice for addressing chronic homelessness.

C. The City's Safe Streets Plan is based on the recommendations of the Community Streets Initiative. A key element of the Safe Streets Plan is creation of supportive housing for individuals experiencing chronic homelessness.

D. A supportive housing facility will meet a critical need in our community by providing access to housing for individuals experiencing chronic homelessness, who are often individuals using more expensive and less effective services such as the jail or emergency room to meet basic needs of shelter.

E. The City has undertaken a number of preliminary steps to develop a proposed supportive housing project that is sufficiently definite to conduct environmental review required by the State Environmental Policy Act (SEPA). These preliminary steps include screening a number of properties as potential locations for the project. Criteria used to screen potential locations include property size and feasibility to accommodate 70 units of supportive housing, availability of the property within a time frame consistent with funding opportunities, proximity to amenities such as transit, grocery stores, and services, land use compatibility, and cost relative to number of units that could be built. Properties evaluated and determined not be feasible are shown in attachment A.

F. As a result of this screening process, the City identified a location on property currently owned by the City containing Reservoir 3, near the intersection of Berkshire Drive and Evergreen Way, as shown in Exhibit B to this resolution. This location is referred to as the "Evergreen Way Property" in this resolution. The Evergreen Way Property is situated in proximity to public transit, grocery stores, and other amenities that are important for individuals transitioning from living outdoors to being part of a community through supportive housing.

G. On May 11, 2016, the City Council authorized the issuance of a Request for Qualifications (RFQ) for the purpose of selecting a developer and operator with experience

developing and operating supportive low-barrier housing facilities. The RFQ identified the Evergreen Way Property as property "which may be developable for the construction and operation of a low-barrier supportive housing facility."

H. On June 1, 2016, the City Council selected Catholic Housing Services of Western Washington ("CHS") as the developer. As called for in the RFQ, the City entered into an exclusive negotiating agreement with CHS with respect to the Evergreen Way Property. These negotiations have not substantively begun. In the meantime, CHS has conducted site-specific investigations such as a geotechnical assessment and confirmed that the Evergreen Way Property is a feasible location for development of the desired project.

I. The completed SEPA review will inform the upcoming negotiations and will help decision makers in their consideration of future actions necessary to authorize development of the project, including:

1. A land transfer or lease agreement with City, under which the City would transfer the property to CHS, by deed or ground lease or other mechanism. The agreement will include the design of the Housing Facility or specific design parameters, so that the City and CHS clearly understand what will be built. The agreements and/or covenants will also include: limitations restricting the use of the Evergreen Way Property to affordable housing; the duration of the resident income requirements and affordability/commitment periods, all of which may be perpetual; the intended population to be served; and service level requirements.

2. An operation agreement with the City for the operation of the facility, which will include, among other things, the scope of services to be provided, the population to be served, and related matters. The goal will be to negotiate an agreement that allows the City to get the needed services from the Project, preserve the facility's long-term financial feasibility, and minimize impacts on the neighborhood.

3. Issuance of permits necessary for development of the project, including imposition of any appropriate mitigation measures.

J. In addition, the SEPA process will be the first of several opportunities for the public to provide input on the project, identify their concerns, and suggest measures to mitigate impacts of the project on the neighborhood.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVERETT that:

SECTION 1. The Evergreen Way Property is designated as the preferred alternative for development of supportive low barrier housing and staff is directed to commence the environmental review of this preferred alternative.

Councilperson Introducing Resolution

PASSED and APPROVED this ____ day of _____, 2016.

Council President

Inadequate Size. *Property not large enough to accommodate at least 70 units of supportive housing.*	**Price.** *The price of property and/or cost to renovate or redevelop above cost benefit.*
Environmental Constraints. *Includes properties that contain streams, wetlands, slopes, or other critical areas minimizing available land.*	
Location Issues. *Lack of proximity access to transit or services.*	[1]Property not currently on the market.

LBH SITE SELECTION ANALYSIS SUMMARY

PROPERTY LOCATION	SIZE (ACRES)	OWNERSHIP	INADEQUATE SIZE	ENVIRONMENTAL CONSTRAINTS	LOCATION ISSUES	PRICE	OWNERSHIP CONTRAINTS	OTHER/NOTES
Village Restaurant - *8525 Evergreen Way*	0.98	Private Property					X	Property parking covenant constraints
Judd and Black Park - *Hewitt and Maple*	0.4	City of Everett	X				X	Right-Of-Way designation, Noise impacts
Jade Park - *104th St. SE & 3rd Ave SE*	10.81	Everett Housing Authority		X				Streams, Wetlands
PUD Surplus Property - *13th and Broadway*	0.58	Snohomish County PUD					X	Unable to secure necessary rental subsidies because of census tract poverty rate
Trinity Lutheran Student Housing Project - *2610 Rockefeller*	0.14	Private Property	X					
Medical/Dental Bldg – *1703 41st St.*	0.28	Private Property				X		Cost of redevelopment above cost benefit
Private Property - *33XX Rockefeller Ave*	0.56	Private Property					X	Property sold to developer before City could pursue acquisition
Private Property - *3213 thru 3219 Rucker Ave*	0.42	Private Property	X			X		
Restaurant - *6211 Evergreen Way*	0.27	Private Property	X[1]					
Longfellow Hall - *3715 Oakes*	2.34	Everett School District				X[1]		School District deciding long term use
Strand Hotel - 2936 Colby	0.13	Private Property	X			X		
Hodges Building - 1802 Hewitt Ave	0.13	Private Property	X			X[1]		

EXHIBIT A

Inadequate Size. *Property not large enough to accommodate at least 70 units of supportive housing.*	**Price.** *The price of property and/or cost to renovate or redevelop above cost benefit.*
Environmental Constraints. *Includes properties that contain streams, wetlands, slopes, or other critical areas minimizing available land.*	
Location Issues. *Lack of proximity access to transit or services.*	[1]Property not currently on the market.

LBH SITE SELECTION ANALYSIS SUMMARY								
PROPERTY LOCATION	**SIZE (ACRES)**	**OWNERSHIP**	**INADEQUATE SIZE**	**ENVIRONMENTAL CONSTRAINTS**	**LOCATION ISSUES**	**PRICE**	**OWNERSHIP CONTRAINTS**	**OTHER/NOTES**
Warehouse - 3614 Smith Ave	0.83	Private Property			X	X		
Haugen Building - 3231 Broadway Ave.	0.47	Private Property				X		
Warehouse - 2815 Baker Ave.	0.34	Private Property	X					
Industrial Building - 300 West Marine View Dr.	18.82	Private Property			X	X		
Commercial Building - 1310 Pacific Ave.	0.19	Private Property	X					
2600 West Marine View Dr.	0.78	City of Everett			X		X	Needed for utility purposes
3515 Hoyt Ave.	0.54	Private Property				X	X	
40XX Smith St.	0.39	City of Everett	X					
Madison and Beverly Blvd.	0.83	City of Everett			X			
74th and Wetmore	1	City of Everett			X			Utility property not in proximity to tranist
Bruskrud Rd.	6.7	City of Everett		X				
Animal Shelter South	5	City of Everett			X			
Excaliber-Silver Lake Rd.	8	City of Everett			X			Title issues

EXHIBIT A

Inadequate Size. *Property not large enough to accommodate at least 70 units of supportive housing.*	**Price.** *The price of property and/or cost to renovate or redevelop above cost benefit.*
Environmental Constraints. *Includes properties that contain streams, wetlands, slopes, or other critical areas minimizing available land.*	
Location Issues. *Lack of proximity access to transit or services.*	[1]Property not currently on the market.

LBH SITE SELECTION ANALYSIS SUMMARY								
PROPERTY LOCATION	**SIZE (ACRES)**	**OWNERSHIP**	**INADEQUATE SIZE**	**ENVIRONMENTAL CONSTRAINTS**	**LOCATION ISSUES**	**PRICE**	**OWNERSHIP CONTRAINTS**	**OTHER/NOTES**
Fulton Lot	1	City of Everett					X	Need for City's Cedar Street Redevelopment
Everett Ave. and Rucker	0.34	City of Everett	X					
35th and Rucker	1.06	Private Property				X		
2301 Broadway	0.34	Private Property	X			X[1]		
1115 N. Broadway	0.53	Private Property			X	X		
6030 Evergreen	0.41	Private Property	X			X		
8421 Evergreen	0.97	Private Property				X		
3030 Broadway	0.36	Private Property	X			X	X[1]	
9602 19th Ave SE	2.62	Private Property				X	X[1]	
1301 Lombard	0.55	Private Property			X		X[1]	Property recently purchased by private party
1205 Broadway	0.63	Private Property			X	X	X[1]	
3231 Broadway	0.47	Private Property				X		

EXHIBIT A

EXHIBIT B
"Evergreen Way Property"

N

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance establishing rates for Everett sewer service and surface water management, rates for water and filtration for inside and outside City customers, rates for wholesale master meters, and repealing Ordinance Nos. 3417-14 (EMC 14.04.020) and 3299-12 (EMC 14.16.710-13)

11/2/16	Briefing
	Proposed Action
	Consent
	Action
11/2/16	First Reading
11/9/16	Second Reading
11/16/16	Third Reading
	Public Hearing
	Budget Advisory

COUNCIL BILL #	CB1610-45
Originating Department	Public Works
Contact Person	Matt Welborn
Phone Number	(425)257-8974
FOR AGENDA OF	November 2, 2016

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
	Ordinance #3299-12 Ordinance #3417-14	Ordinance	Public Works

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

DETAILED SUMMARY STATEMENT:
Everett Utilities has completed the 2016 water, filtration, sewer, and storm water cost of service study. The study indicates increased water and filtration charges are necessary to fund capital expenditures, and to meet water quality, supply, regulatory and financial obligations of Everett Utilities.

Water and filtration rates, based on consumption of 700 cubic feet per month, will increase annually from the current charge of **$29.734** per month to **$29.876** per month in 2017, $**30.67** per month in 2018, **$31.432** in 2019, and **$32.224** in 2020. Increased sewer and surface water charges are necessary to continue to aggressively maintain, replace, and expand utility infrastructure.

Sewer rates will increase annually from the current Single-Family charge of **$59.87** per month to $**67.01** in 2017, **$70.37** in 2018, **$73.66** in 2019, and **$77.12** in 2020.

Surface water rates for unsewered accounts will increase annually from the current Single-Family charge of **$17.44** per month to $**22.67** in 2017, **$24.03** in 2018, $**25.47** in 2019, and **$27.00** in 2020.

The overall utility bill increase for a single-family customer using 700 cubic feet of water per month will be 7.8% in 2017, 4.1% in 2018, 3.9% in 2019, and 3.9% in 2020.

RECOMMENDATION (Exact action requested of Council):
Adopt an Ordinance establishing rates for Everett sewer service and surface water management, rates for water and filtration for inside and outside City customers, rates for wholesale master meters, and repealing Ordinance Nos. 3417-14 (EMC 14.04.020) and 3299-12 (EMC 14.16.710-13).

ORDINANCE NO. _____

An ORDINANCE establishing rates for Everett sewer service and surface water management, rates for water and filtration for inside and outside City customers, rates for wholesale master meters, and repealing Ordinance Nos. 3417-14 (EMC 14.04.020) and 3299-12 (EMC 14.16.710-13).

WHEREAS, Ordinance 3417-14 was adopted on December 17, 2014 establishing current sewer and surface water management rates for Everett sewer customers; and

WHEREAS, Ordinance 3299-12 was adopted on November 21, 2012, establishing current water and filtration rates for Everett water customers; and

WHEREAS, the 2016 cost of service study has been completed; and

WHEREAS, to cover the cost of service, a general rate increase is necessary to cover operations, maintenance and capital expenditures; and

WHEREAS, the City Council finds that the charges herein are reasonable;

NOW, THEREFORE, the City of Everett does ordain:

Section 1: Effective January 1, 2017, and thereafter, service charges for the City of Everett sewer system are hereby fixed as follows:

A. Single family residence: $67.22 per month

(The monthly charge includes Surface Water Quality Protection and Enhancement and the current state utility tax.)

B. For other than single family residence (multiple family residence, commercial, and industrial users, etc.) the rate shall be computed in accordance with the following formula:

Sewer services charge per month = $7.47 per 100 cubic feet of metered water consumption

(The monthly charge includes Surface Water Quality Protection and Enhancement and the current state utility tax.)

The minimum monthly charge regardless of usage shall be $67.22 per month.

C. Septage volume fees: $0.2267 per gallon of discharge

Section 2: Effective January 1, 2017, and thereafter, service charges for City of Everett surface water management services are hereby assessed on all utility customers in Everett not being billed for sewer service as follows:

A. Single family residence: $22.67 per month

(The monthly charge includes the current state utility tax.)

B. For other than single family residence (multiple family residence, commercial, and industrial users, etc.). The rate shall be computed in accordance with the following formula:

$$\text{Drainage service charge per month} = \frac{\text{Metered water usage}}{900 \text{ cu.ft.}} \times 22.67$$

(The monthly charge includes the current state utility tax.)

The minimum monthly charge regardless of usage shall be $22.67 per month.

Section 3: Effective January 1, 2018, and thereafter, service charges for the City of Everett sewer system are hereby fixed as follows:

A. Single family residence: $71.26 per month

(The monthly charge includes Surface Water Quality Protection and Enhancement and the current state utility tax.)

B. For other than single family residence (multiple family residence, commercial, and industrial users, etc.) the rate shall be computed in accordance with the following formula:

Sewer services charge per month = $7.92 per 100 cubic feet of metered water consumption

(The monthly charge includes Surface Water Quality Protection and Enhancement and the current state utility tax.)

The minimum monthly charge regardless of usage shall be $71.26 per month.

C. Septage volume fees: $0.2380 per gallon of discharge

Section 4: Effective January 1, 2018, and thereafter, service charges for City of Everett surface water management services are hereby assessed on all utility customers in Everett not being billed for sewer service as follows:

A. Single family residence: $24.48 per month

(The monthly charge includes the current state utility tax.)

B. For other than single family residence (multiple family residence, commercial, and industrial users, etc.). The rate shall be computed in accordance with the following formula:

$$\text{Drainage service charge per month} = \frac{\text{Metered water usage}}{900 \text{ cu.ft.}} \times 24.48$$

(The monthly charge includes the current state utility tax.)

The minimum monthly charge regardless of usage shall be $24.48 per month.

Section 5: Effective January 1, 2019, and thereafter, service charges for the City of Everett sewer system are hereby fixed as follows:

A. Single family residence: $75.33 per month

(The monthly charge includes Surface Water Quality Protection and Enhancement and the current state utility tax.)

B. For other than single family residence (multiple family residence, commercial, and industrial users, etc.) the rate shall be computed in accordance with the following formula:

Sewer services charge per month = $8.37 per 100 cubic feet of metered water consumption

(The monthly charge includes Surface Water Quality Protection and Enhancement and the current state utility tax.)

The minimum monthly charge regardless of usage shall be $75.33 per month.

C. Septage volume fees: $0.2487 per gallon of discharge

Section 6: Effective January 1, 2019, and thereafter, service charges for City of Everett surface water management services are hereby assessed on all utility customers in Everett not being billed for sewer service as follows:

A. Single family residence: $26.44 per month

(The monthly charge includes the current state utility tax.)

B. For other than single family residence (multiple family residence, commercial, and industrial users, etc.). The rate shall be computed in accordance with the following formula:

Drainage service charge per month=$\frac{\text{Metered water usage}}{900 \text{ cu.ft.}}$ x 26.44

(The monthly charge includes the current state utility tax.)

The minimum monthly charge regardless of usage shall be $26.44 per month.

Section 7: Effective January 1, 2020, and thereafter, service charges for the City of Everett sewer system are hereby fixed as follows:

A. Single family residence: $79.65 per month

(The monthly charge includes Surface Water Quality Protection and Enhancement and the current state utility tax.)

B. For other than single family residence (multiple family residence, commercial, and industrial users, etc.) the rate shall be computed in accordance with the following formula:

Sewer services charge per month = $8.84 per 100 cubic feet of metered water consumption

(The monthly charge includes Surface Water Quality Protection and Enhancement and the current state utility tax.)

The minimum monthly charge regardless of usage shall be $79.65 per month.

C. Septage volume fees: $0.2599 per gallon of discharge

Section 8: Effective January 1, 2020, and thereafter, service charges for City of Everett surface water management services are hereby assessed on all utility customers in Everett not being billed for sewer service as follows:

A. Single family residence: $28.56 per month

(The monthly charge includes the current state utility tax.)

B. For other than single family residence (multiple family residence, commercial, and industrial users, etc.). The rate shall be computed in accordance with the following formula:

Drainage service charge per month=$\frac{\text{Metered water usage}}{900 \text{ cu.ft.}}$ x 28.56

(The monthly charge includes the current state utility tax.)

The minimum monthly charge regardless of usage shall be $28.56 per month.

Section 9: Effective January 1, 2017, and thereafter, the monthly water rates and charges, monthly minimum charges, filtration charges, and provisions relating to rates and charges throughout the water system shall be as follows:

A. Within City Limits

1. Fixed rate accounts – minimum monthly water charge $36.50
   Filtration Charge 6.18
   Total Fixed Rate $42.68

2. a. Domestic metered rates – water charge:
   First 500 cu. Ft., 0-500 cu. Ft. $18.25
   Over 500 cu. Ft. $3.65 per 100 cu. Ft.

   b. In addition, there shall be added a filtration charge of $0.618 per 100 cu. ft., $3.09 per month minimum.

   c. The following minimum monthly charge shall apply to all Residential metered services to which water is available without regard to actual consumption:

Meter Size	Cu. Ft. of Water Provided at Minimum Charge	Minimum Water Charge	Minimum Filtration Charge	Minimum Charge W/O Regard to Consumption
1/2 - 3/4 inch	500	$18.25	$3.09	$21.34
1 inch	1,000	$36.50	$6.18	$42.68
2 inch	1,200	$43.80	$7.42	$51.22
Over 2 inch	1,600	$58.40	$9.89	$68.29

3. a. Commercial/Industrial/Governmental metered rates – water charge:

   First 600 cu. ft., 0-600 cu. ft. $21.90
   Next 2,400 cu. ft., 600-3,000 cu. ft. $3.65 per 100 cu. ft.
   Next 12,000 cu. ft., 3,000-15,000 cu. ft. $2.39 per 100 cu. ft.
   Over 15,000 cu. ft. $1.36 per 100 cu. ft.

   b. In addition, there shall be added a filtration charge of $0.618 per 100 cu. ft., $3.71 per month minimum. All wholesale customers shall be assessed a 20% rate multiplier on the water charge. No multiplier shall be assessed on the filtration charge.

   c. The following minimum monthly charge shall apply to all services to which water is available without regard to actual consumption:

Meter Size	Cu. Ft. of Water Provided at Minimum Charge	Minimum Water Charge	Minimum Filtration Charge	Minimum Charge W/O Regard to Consumption
1/2 - 3/4 inch	600	$21.90	$3.71	$25.61
1 inch	1,000	$36.50	$6.18	$42.68
2 inch	1,200	$43.80	$7.42	$51.22
Over 2 inch	1,600	$58.40	$9.89	$68.29

4. a. Irrigation metered rates – water charge:

First	600 cu. ft., 0-600 cu. ft.	$25.08
Next	2,400 cu. ft., 600-3,000 cu. ft.	$4.18 per 100 cu. ft.
Next	12,000 cu. ft., 3,000-15,000 cu. ft.	$2.64 per 100 cu. ft.
Over	15,000 cu. ft	$1.95 per 100 cu. ft.

b. In addition, there shall be added a filtration charge of $0.618 per 100 cu. ft., $3.71 per month minimum.

c. The following minimum monthly charge shall apply to all services to which water is available without regard to actual consumption:

Meter Size	Cu. Ft. of Water Provided at Minimum Charge	Minimum Water Charge	Minimum Filtration Charge	Minimum Charge W/O Regard to Consumption
1/2 - 3/4 inch	600	$25.08	$3.71	$28.79
1 inch	1,000	$41.80	$6.18	$47.98
2 inch	1,200	$50.16	$7.42	$57.58
Over 2 inch	1,600	$66.88	$9.89	$76.77

5. a. City installed service connection charges:

5/8 x ¾ inch	$2,900.00 each
1 inch	$2,900.00
2 inch	$4,402.00

b. Service connection installations larger than the two-inch size shall be charged at the actual cost of the complete installation.

c. Said charges include a $84 non-refundable application fee. Service connection applications shall be valid only for 180 days from date of issue unless work is in progress or a reasonable time extension is granted by the Public Works Director,

Service connection charges (less said non-refundable application fee) may be refunded to the applicant in the event that refund is requested within one year from the date of issue.

d. Developer installed connection charges:

5/8 x ¾ inch	$480.00 each
1 inch	$560.00
2 inch	$990.00

6. Special Charges:

a.	Turn-on for restart of service	$31.00 each
b.	Shut-off requested for premises where customer's stop and waste valve should have been used	$59.00 each
c.	Turn-on and shut-off requested for a time other than regular hours	$168.00 per call out
d.	Meter testing: All meters regardless of size in shop testing with 1 hour minimum Using meter test van with 3-hour minimum	$168.00 per hour $504.00 per hour
e.	Destroying or removing lock on meter	$77.00
f.	Illegal turn-on, tampering of water service or illegal connection (Plus costs of repairs)	$180.00
g.	Lien processing fee	$150.00
h.	New account setup charge	$38.00
i.	Locate and mark City water shut-off valve	$59.00
j.	Temporary shut-off/turn-on	$59.00
k.	Temporary shut-off/turn-on (Vault Entry)	$118.00
l.	Failure to return a city owned water service key	$77.00
m.	Returned check fee	$33.00

n.	Hang notice for delinquent account	$31.00
o.	Illegal taking of water from a fire hydrant	$1,000.00
p.	Non-compliance with annual back-flow testing	$50.00 per month
q.	Construction Meters	
	Deposit	$1,500.00
	Usage per CCF	$4.27 per ccf
r.	Hydrant Permit	
	Deposit	$100.00
	Monthly fee based on projected usage	
	Low (0 to 30,000 gallons/month)	$100.00
	Medium (30,001 to 60,000 gallons/month)	$200.00
	High (over 60,000 gallons/month)	$400.00
s.	Dormant Inspection	$60.00

t. Should a customer receive a "past due letter" for failure to pay by the due date, a late fee equal to 5% of the payment past due will be assessed on all amounts in arrears at the time of each monthly billing

u. When a permit for an Irrigation service for a single family home is issued that is currently on a flat rate service, the customer will be required to change to a metered service

7. Fire Service. The rates for water supplied exclusively for fire protection purposes shall be deemed service charges and shall be for any one month, or fractional part thereof, as follows:

Size of Service	Service Charge
2 inches	$13.50
3 inches	$18.50
4 inches	$23.50
6 inches	$34.00

8 inches	$44.25
10 inches	$55.75
12 inches	$64.50

B. Outside the City Limits

1. Individual Meters Outside of the City Limits. The consumption and minimum monthly water charges for individual metered services outside the City limits shall be computed in the same manner as for Residential metered customers within the City and then a multiplier of twenty-five percent of this amount shall be added to the water charge so computed. In addition, a charge of $0.68 per 100 cu. ft. or $4.08 minimum filtration charge shall be added to arrive at the total monthly charge. No multiplier shall be added to the filtration charge.

2. Master Meters

   a. Master meter rates shall be required for water districts, water associations or other organizations providing water service to 16 or more permanent services. Organizations serving less than 16 services and all other customers shall be charged at the individual meter rate.

   b. The consumption charges for master meters shall be as follows:

      i. For master meters connected east of the Snohomish River, the water charge shall be:

Meter Charge	$407.23 per meter/ per month
Water Charge (exclusive of meter charge)	.5707 per 100 cu. ft.

      In addition to said water charge there shall be added a twenty percent rate multiplier to the water charge and a filtration charge of $0.68 per 100 cu. ft. to arrive at the total monthly charge. No multiplier shall be added to the filtration charge.

      ii. For master meters connected west of the Snohomish River, the water charge shall be the same as the Commercial/Industrial/Governmental water rate.

      In addition to said water charge and applicable meter charge, there shall be added a twenty percent rate multiplier and a filtration charge of $0.68 per 100 cu. ft. to arrive at the total monthly charge. No multiplier shall be added to the meter charge or the filtration charge.

3. Service Connection Charges. Service connection installations outside the City limits of all sizes shall be charged at the actual cost of the complete installation but in no event

shall the charge for a three-quarter inch, a one-inch or a two-inch service be less than the amount charged for service connections within the City limits.

4. Delinquent Penalty and Special Charges. The delinquent penalty and special charges as set forth in Section 9 plus a multiplier of twenty-five percent, shall apply to customers outside the City limits.

Section 10: Effective January 1, 2018, and thereafter, the monthly water rates and charges, monthly minimum charges, filtration charges, and provisions relating to rates and charges throughout the water system shall be as follows:

A. Within City Limits

1. Fixed rate accounts – minimum monthly water charge $37.96
   Filtration Charge 6.40
   Total Fixed Rate $44.36

2. a. Domestic metered rates – water charge:
   First 500 cu. Ft., 0-500 cu. Ft. $18.98
   Over 500 cu. Ft. $3.80 per 100 cu. Ft.

   b. In addition, there shall be added a filtration charge of $0.64 per 100 cu. ft., $3.20 per month minimum.

   c. The following minimum monthly charge shall apply to all Residential metered services to which water is available without regard to actual consumption:

Meter Size	Cu. Ft. of Water Provided at Minimum Charge	Minimum Water Charge	Minimum Filtration Charge	Minimum Charge W/O Regard to Consumption
1/2 - 3/4 inch	500	$18.98	$3.20	$22.18
1 inch	1,000	$37.96	$6.40	$44.36
2 inch	1,200	$45.55	$7.68	$53.23
Over 2 inch	1,600	$60.74	$10.24	$70.98

3. a. Commercial/Industrial/Governmental metered rates – water charge:

First	600 cu. ft., 0-600 cu. ft.	$22.78
Next	2,400 cu. ft., 600-3,000 cu. ft.	$3.80 per 100 cu. ft.
Next	12,000 cu. ft., 3,000-15,000 cu. ft.	$2.49 per 100 cu. ft.
Over	15,000 cu. ft.	$1.41 per 100 cu. ft.

b. In addition, there shall be added a filtration charge of $0.64 per 100 cu. ft., $3.84 per month minimum. All wholesale customers shall be assessed a 20% rate multiplier on the water charge. No multiplier shall be assessed on the filtration charge.

c. The following minimum monthly charge shall apply to all services to which water is available without regard to actual consumption:

Meter Size	Cu. Ft. of Water Provided at Minimum Charge	Minimum Water Charge	Minimum Filtration Charge	Minimum Charge W/O Regard to Consumption
1/2 - 3/4 inch	600	$22.78	$3.84	$26.62
1 inch	1,000	$37.96	$6.40	$44.36
2 inch	1,200	$45.55	$7.68	$53.23
Over 2 inch	1,600	$60.74	$10.24	$70.98

4. a. Irrigation metered rates – water charge:

First	600 cu. ft., 0-600 cu. ft.	$26.08
Next	2,400 cu. ft., 600-3,000 cu. ft.	$4.35 per 100 cu. ft.
Next	12,000 cu. ft., 3,000-15,000 cu. ft.	$2.75 per 100 cu. ft.
Over	15,000 cu. ft	$2.03 per 100 cu. ft.

b. In addition, there shall be added a filtration charge of $0.64 per 100 cu. ft., $3.84 per month minimum.

c. The following minimum monthly charge shall apply to all services to which water is available without regard to actual consumption:

Meter Size	Cu. Ft. of Water Provided at Minimum Charge	Minimum Water Charge	Minimum Filtration Charge	Minimum Charge W/O Regard to Consumption
1/2 - 3/4 inch	600	$26.08	$3.84	$29.92
1 inch	1,000	$43.47	$6.40	$49.87
2 inch	1,200	$52.17	$7.67	$59.84
Over 2 inch	1,600	$69.56	$10.23	$79.79

5. a. City installed service connection charges:

5/8 x ¾ inch	$3,016.00 each
1 inch	$3,016.00
2 inch	$4,450.00

b. Service connection installations larger than the two-inch size shall be charged at the actual cost of the complete installation.

c. Said charges include an $87 non-refundable application fee. Service connection applications shall be valid only for 180 days from date of issue unless work is in progress or a reasonable time extension is granted by the Public Works Director, Service connection charges (less said non-refundable application fee) may be refunded to the applicant in the event that refund is requested within one year from the date of issue.

d. Developer installed connection charges:

5/8 x ¾ inch	$ 500.00 each
1 inch	$ 582.00
2 inch	$1,030.00

6. Special Charges:

a.	Turn-on for restart of service	$31.00 each
b.	Shut-off requested for premises where customer's stop and waste valve should have been used	$59.00 each
c.	Turn-on and shut-off requested for a time other than regular hours	$168.00 per call out
d.	Meter testing: All meters regardless of size in shop testing with 1 hour minimum Using meter test van with 3-hour minimum	$168.00 per hour $504.00 per hour
e.	Destroying or removing lock on meter	$77.00
f.	Illegal turn-on, tampering of water service or illegal connection (Plus cost of repairs)	$180.00
g.	Lien processing fee	$150.00
h.	New account setup charge	$38.00
i.	Locate and mark City water shut-off valve	$59.00
j.	Temporary shut-off/turn-on	$59.00
k.	Temporary shut-off/turn-on (Vault Entry)	$118.00

l.	Failure to return a city owned water service key	$77.00
m.	Returned check fee	$33.00
n.	Hang notice for delinquent account	$31.00
o.	Illegal taking of water from a fire hydrant	$1,000.00
p.	Non-compliance with annual back-flow testing	$50.00 per month
q.	Construction Meters	
	Deposit	$1,500.00
	Usage per CCF	$4.44 per ccf
r.	Hydrant Permit	
	Deposit	$100.00
	Monthly fee based on projected usage	
	Low (0 to 30,000 gallons/month)	$100.00
	Medium (30,001 to 60,000 gallons/month)	$200.00
	High (over 60,000 gallons/month)	$400.00
s.	Dormant Inspection	$60.00
t.	Should a customer receive a "past due letter" for failure to pay by the due date, a late fee equal to 5% of the payment past due will be assessed on all amounts in arrears at the time of each monthly billing	
u.	When a permit for an Irrigation service for a single family home is issued that is currently on a flat rate service, the customer will be required to change to a metered service	

7. Fire Service. The rates for water supplied exclusively for fire protection purposes shall be deemed service charges and shall be for any one month, or fractional part thereof, as follows:

Size of Service	Service Charge
2 inches	$14.04
3 inches	$19.24
4 inches	$24.44

6 inches	$35.36
8 inches	$46.02
10 inches	$57.98
12 inches	$67.08

B. Outside the City Limits

1. Individual Meters Outside of the City Limits. The consumption and minimum monthly water charges for individual metered services outside the City limits shall be computed in the same manner as for Residential metered customers within the City and then a multiplier of twenty-five percent of this amount shall be added to the water charge so computed. In addition, a charge of $0.704 per 100 cu. ft. or $4.22 minimum filtration charge shall be added to arrive at the total monthly charge. No multiplier shall be added to the filtration charge.

2. Master Meters

a. Master meter rates shall be required for water districts, water associations or other organizations providing water service to 16 or more permanent services. Organizations serving less than 16 services and all other customers shall be charged at the individual meter rate.

b. The consumption charges for master meters shall be as follows:

i. For master meters connected east of the Snohomish River, the water charge shall be:

Meter Charge	$407.23 per meter/ per month
Water Charge (exclusive of meter charge)	.5707 per 100 cu. ft.

In addition to said water charge there shall be added a twenty percent rate multiplier to the water charge and a filtration charge of $0.70 per 100 cu. ft. to arrive at the total monthly charge. No multiplier shall be added to the filtration charge.

ii. For master meters connected west of the Snohomish River, the water charge shall be the same as the Commercial/Industrial/Governmental water rate.

In addition to said water charge and applicable meter charge, there shall be added a twenty percent rate multiplier and a filtration charge of $0.70 per 100 cu. ft. to arrive at the total monthly charge. No multiplier shall be added

to the meter charge or the filtration charge.

3. Service Connection Charges. Service connection installations outside the City limits of all sizes shall be charged at the actual cost of the complete installation but in no event shall the charge for a three-quarter inch, a one-inch or a two-inch service be less than the amount charged for service connections within the City limits.

4. Delinquent Penalty and Special Charges. The delinquent penalty and special charges as set forth in Section 10 plus a multiplier of twenty-five percent, shall apply to customers outside the City limits.

Section 11: Effective January 1, 2019, and thereafter, the monthly water rates and charges, monthly minimum charges, filtration charges, and provisions relating to rates and charges throughout the water system shall be as follows:

A. Within City Limits

1. Fixed rate accounts – minimum monthly water charge $39.48
   Filtration Charge 6.56
   Total Fixed Rate $46.04

2. a. Domestic metered rates – water charge:
   First 500 cu. Ft., 0-500 cu. Ft. $19.74
   Over 500 cu. Ft. $3.95 per 100 cu. Ft.

   b. In addition, there shall be added a filtration charge of $0.656 per 100 cu. ft., $3.28 per month minimum.

   c. The following minimum monthly charge shall apply to all Residential metered services to which water is available without regard to actual consumption:

Meter Size	Cu. Ft. of Water Provided at Minimum Charge	Minimum Water Charge	Minimum Filtration Charge	Minimum Charge W/O Regard to Consumption
1/2 - 3/4 inch	500	$19.74	$3.28	$23.02
1 inch	1,000	$39.48	$6.56	$46.04
2 inch	1,200	$47.37	$7.87	$55.24
Over 2 inch	1,600	$63.17	$10.50	$73.67

3. a. Commercial/Industrial/Governmental metered rates – water charge:

First	600 cu. ft., 0-600 cu. ft.	$23.69
Next	2,400 cu. ft., 600-3,000 cu. ft.	$3.95 per 100 cu. ft.

Next	12,000 cu. ft., 3,000-15,000 cu. ft.	$2.59 per 100 cu. ft.
Over	15,000 cu. ft.	$1.47 per 100 cu. ft.

b. In addition, there shall be added a filtration charge of $0.656 per 100 cu. ft., $3.94 per month minimum. All wholesale customers shall be assessed a 20% rate multiplier on the water charge. No multiplier shall be assessed on the filtration charge.

c. The following minimum monthly charge shall apply to all services to which water is available without regard to actual consumption:

Meter Size	Cu. Ft. of Water Provided at Minimum Charge	Minimum Water Charge	Minimum Filtration Charge	Minimum Charge W/O Regard to Consumption
1/2 - 3/4 inch	600	$23.69	$3.94	$27.63
1 inch	1,000	$39.48	$6.56	$46.04
2 inch	1,200	$47.37	$7.87	$55.24
Over 2 inch	1,600	$63.17	$10.50	$73.67

4. a. Irrigation metered rates – water charge:

First	600 cu. ft., 0-600 cu. ft.	$27.12
Next	2,400 cu. ft., 600-3,000 cu. ft.	$4.52 per 100 cu. ft.
Next	12,000 cu. ft., 3,000-15,000 cu. ft.	$2.86 per 100 cu. ft.
Over	15,000 cu. ft	$2.11 per 100 cu. ft.

b. In addition, there shall be added a filtration charge of $0.656 per 100 cu. ft., $3.93 per month minimum.

c. The following minimum monthly charge shall apply to all services to which water is available without regard to actual consumption:

Meter Size	Cu. Ft. of Water Provided at Minimum Charge	Minimum Water Charge	Minimum Filtration Charge	Minimum Charge W/O Regard to Consumption
1/2 - 3/4 inch	600	$27.12	$3.93	$31.05
1 inch	1,000	$45.21	$6.56	$51.77
2 inch	1,200	$54.26	$7.87	$62.13
Over 2 inch	1,600	$72.34	$10.49	$82.83

5. a. City installed service connection charges:

5/8 x ¾ inch	$3,135.00 each
1 inch	$3,135.00
2 inch	$4,625.00

b. Service connection installations larger than the two-inch size shall be charged at the actual cost of the complete installation.

c. Said charges include an $91 non-refundable application fee. Service connection applications shall be valid only for 180 days from date of issue unless work is in progress or a reasonable time extension is granted by the Public Works Director, Service connection charges (less said non-refundable application fee) may be refunded to the applicant in the event that refund is requested within one year from the date of issue.

d. Developer installed connection charges:

5/8 x ¾ inch	$ 520.00 each
1 inch	$ 605.00
2 inch	$1,071.00

6. Special Charges:

a.	Turn-on for restart of service	$34.00 each
b.	Shut-off requested for premises where customer's stop and waste valve should have been used	$64.00 each
c.	Turn-on and shut-off requested for a time other than regular hours	$175.00 per call out
d.	Meter testing: All meters regardless of size in shop testing with 1 hour minimum	$175.00 per hour
	Using meter test van with 3-hour minimum	$525.00 per hour
e.	Destroying or removing lock on meter	$80.00

f.	Illegal turn-on, tampering of water service or illegal connection (Plus cost of repairs)	$195.00
g.	Lien processing fee	$150.00
h.	New account setup charge	$38.00
i.	Locate and mark City water shut-off valve	$64.00
j.	Temporary shut-off/turn-on	$64.00
k.	Temporary shut-off/turn-on (Vault Entry)	$128.00
l.	Failure to return a city owned water service key	$80.00
m.	Returned check fee	$33.00
n.	Hang notice for delinquent account	$34.00
o.	Illegal taking of water from a fire hydrant	$1,000.00
p.	Non-compliance with annual back-flow testing	$50.00 per month
q.	Construction Meters	
	Deposit	$1,500.00
	Usage per CCF	$4.61 per ccf
r.	Hydrant Permit	
	Deposit	$100.00
	Monthly fee based on projected usage	
	Low (0 to 30,000 gallons/month)	$100.00
	Medium (30,001 to 60,000 gallons/month)	$200.00
	High (over 60,000 gallons/month)	$400.00
s.	Dormant Inspection	$65.00
t.	Should a customer receive a "past due letter" for failure to pay by the due date, a late fee equal to 5% of the payment past due will be assessed on all amounts in arrears at the time of each monthly billing	

u. When a permit for an Irrigation service for a single family home is issued that is currently on a flat rate service, the customer will be required to change to a metered service

7. Fire Service. The rates for water supplied exclusively for fire protection purposes shall be deemed service charges and shall be for any one month, or fractional part thereof, as follows:

Size of Service	Service Charge
2 inches	$14.60
3 inches	$20.01
4 inches	$25.42
6 inches	$36.77
8 inches	$47.86
10 inches	$60.30
12 inches	$69.76

B. Outside the City Limits

1. Individual Meters Outside of the City Limits. The consumption and minimum monthly water charges for individual metered services outside the City limits shall be computed in the same manner as for Residential metered customers within the City and then a multiplier of twenty-five percent of this amount shall be added to the water charge so computed. In addition, a charge of $0.721 per 100 cu. ft. or $4.33 minimum filtration charge shall be added to arrive at the total monthly charge. No multiplier shall be added to the filtration charge.

2. Master Meters

a. Master meter rates shall be required for water districts, water associations or other organizations providing water service to 16 or more permanent services. Organizations serving less than 16 services and all other customers shall be charged at the individual meter rate.

b. The consumption charges for master meters shall be as follows:

i. For master meters connected east of the Snohomish River, the water charge shall be:

Meter Charge	$407.23 per meter/ per month
Water Charge (exclusive of meter charge)	.5707 per 100 cu. ft.

In addition to said water charge there shall be added a twenty percent rate Multiplier to the water charge and a filtration charge of $0.72 per 100 cu. ft. to arrive at the total monthly charge. No multiplier shall be added to the filtration charge.

ii. For master meters connected west of the Snohomish River, the water charge shall be the same as the Commercial/Industrial/Governmental water rate.

In addition to said water charge and applicable meter charge, there shall be added a twenty percent rate multiplier and a filtration charge of $0.72 per 100 cu. ft. to arrive at the total monthly charge. No multiplier shall be added to the meter charge or the filtration charge.

3. Service Connection Charges. Service connection installations outside the City limits of all sizes shall be charged at the actual cost of the complete installation but in no event shall the charge for a three-quarter inch, a one-inch or a two-inch service be less than the amount charged for service connections within the City limits.

4. Delinquent Penalty and Special Charges. The delinquent penalty and special charges as set forth in Section 11 plus a multiplier of twenty-five percent, shall apply to customers outside the City limits.

Section 12: Effective January 1, 2020, and thereafter, the monthly water rates and charges, monthly minimum charges, filtration charges, and provisions relating to rates and charges throughout the water system shall be as follows:

A. Within City Limits

1. Fixed rate accounts – minimum monthly water charge $41.06
   Filtration Charge 6.72
   Total Fixed Rate $47.78

2. a. Domestic metered rates – water charge:
   First 500 cu. Ft., 0-500 cu. Ft. $20.53
   Over 500 cu. Ft. $4.11 per 100 cu. Ft.

   b. In addition, there shall be added a filtration charge of $0.672 per 100 cu. ft., $3.36 per month minimum.

   c. The following minimum monthly charge shall apply to all Residential metered services to which water is available without regard to actual consumption:

Meter Size	Cu. Ft. of Water Provided at Minimum Charge	Minimum Water Charge	Minimum Filtration Charge	Minimum Charge W/O Regard to Consumption
1/2 - 3/4 inch	500	$20.53	$3.36	$23.89
1 inch	1,000	$41.06	$6.72	$47.78
2 inch	1,200	$49.26	$8.06	$57.32
Over 2 inch	1,600	$65.70	$10.75	$76.45

3. a. Commercial/Industrial/Governmental metered rates – water charge:

First	600 cu. ft., 0-600 cu. ft.	$24.64
Next	2,400 cu. ft., 600-3,000 cu. ft.	$4.11 per 100 cu. ft.
Next	12,000 cu. ft., 3,000-15,000 cu. ft.	$2.69 per 100 cu. ft.
Over	15,000 cu. ft.	$1.53 per 100 cu. ft.

b. In addition, there shall be added a filtration charge of $0.672 per 100 cu. ft., $4.03 per month minimum. All wholesale customers shall be assessed a 20% rate multiplier on the water charge. No multiplier shall be assessed on the filtration charge.

c. The following minimum monthly charge shall apply to all services to which water is available without regard to actual consumption:

Meter Size	Cu. Ft. of Water Provided at Minimum Charge	Minimum Water Charge	Minimum Filtration Charge	Minimum Charge W/O Regard to Consumption
1/2 - 3/4 inch	600	$24.64	$4.03	$28.67
1 inch	1,000	$41.06	$6.72	$47.78
2 inch	1,200	$49.26	$8.06	$57.32
Over 2 inch	1,600	$65.70	$10.75	$76.45

4. a. Irrigation metered rates – water charge:

First	600 cu. ft., 0-600 cu. ft.	$28.20
Next	2,400 cu. ft., 600-3,000 cu. ft.	$4.70 per 100 cu. ft.
Next	12,000 cu. ft., 3,000-15,000 cu. ft.	$2.97 per 100 cu. ft.
Over	15,000 cu. ft	$2.19 per 100 cu. ft.

b. In addition, there shall be added a filtration charge of $0.672 per 100 cu. ft., $4.03 per month minimum.

c. The following minimum monthly charge shall apply to all services to which water is available without regard to actual consumption:

Meter Size	Cu. Ft. of Water Provided at Minimum Charge	Minimum Water Charge	Minimum Filtration Charge	Minimum Charge W/O Regard to Consumption
1/2 - 3/4 inch	600	$28.20	$4.03	$32.23
1 inch	1,000	$47.02	$6.72	$53.74
2 inch	1,200	$56.43	$8.06	$64.49
Over 2 inch	1,600	$75.23	$10.75	$85.98

5. a. City installed service connection charges:

5/8 x ¾ inch	$3,260.00 each
1 inch	$3,260.00
2 inch	$4,810.00

b. Service connection installations larger than the two-inch size shall be charged at the actual cost of the complete installation.

c. Said charges include an $95 non-refundable application fee. Service connection applications shall be valid only for 180 days from date of issue unless work is in progress or a reasonable time extension is granted by the Public Works Director, Service connection charges (less said non-refundable application fee) may be refunded to the applicant in the event that refund is requested within one year from the date of issue.

d. Developer installed connection charges:

5/8 x ¾ inch	$ 540.00 each
1 inch	$ 630.00
2 inch	$1,115.00

6. Special Charges:

a.	Turn-on for restart of service	$34.00 each
b.	Shut-off requested for premises where customer's stop and waste valve should have been used	$64.00 each
c.	Turn-on and shut-off requested for a time other than regular hours	$175.00 per call out

d.	Meter testing: All meters regardless of size in shop testing with 1 hour minimum Using meter test van with 3-hour minimum	$175.00 per hour $525.00 per hour
e.	Destroying or removing lock on meter	$80.00
f.	Illegal turn-on, tampering of water service or illegal connection (Plus cost of repairs)	$195.00
g.	Lien processing fee	$150.00
h.	New account setup charge	$38.00
i.	Locate and mark City water shut-off valve	$64.00
j.	Temporary shut-off/turn-on	$64.00
k.	Temporary shut-off/turn-on (Vault Entry)	$128.00
l.	Failure to return a city owned water service key	$80.00
m.	Returned check fee	$33.00
n.	Hang notice for delinquent account	$34.00
o.	Illegal taking of water from a fire hydrant	$1,000.00
p.	Non-compliance with annual back-flow testing	$50.00 per month
q.	Construction Meters Deposit Usage per CCF	 $1,500.00 $4.78 per ccf
r.	Hydrant Permit Deposit Monthly fee based on projected usage Low (0 to 30,000 gallons/month) Medium (30,001 to 60,000 gallons/month) High (over 60,000 gallons/month)	 $100.00 $100.00 $200.00 $400.00
s.	Dormant Inspection	$65.00

t. Should a customer receive a "past due letter" for failure to pay by the due date, a late fee equal to 5% of the payment past due will be assessed on all amounts in arrears at the time of each monthly billing

u. When a permit for an Irrigation service for a single family home is issued that is currently on a flat rate service, the customer will be required to change to a metered service

8. Fire Service. The rates for water supplied exclusively for fire protection purposes shall be deemed service charges and shall be for any one month, or fractional part thereof, as follows:

Size of Service	Service Charge
2 inches	$15.18
3 inches	$20.81
4 inches	$26.44
6 inches	$38.24
8 inches	$49.77
10 inches	$62.71
12 inches	$72.55

B. Outside the City Limits

1. Individual Meters Outside of the City Limits. The consumption and minimum monthly water charges for individual metered services outside the City limits shall be computed in the same manner as for Residential metered customers within the City and then a multiplier of twenty-five percent of this amount shall be added to the water charge so computed. In addition, a charge of $0.739 per 100 cu. ft. or $4.44 minimum filtration charge shall be added to arrive at the total monthly charge. No multiplier shall be added to the filtration charge.

2. Master Meters

a. Master meter rates shall be required for water districts, water associations or other organizations providing water service to 16 or more permanent services. Organizations serving less than 16 services and all other customers shall be charged at the individual meter rate.

b. The consumption charges for master meters shall be as follows:

i. For master meters connected east of the Snohomish River, the water charge shall be:

Meter Charge	$407.23 per meter/ per month
Water Charge (exclusive of meter charge)	.5707 per 100 cu. ft.

In addition to said water charge there shall be added a twenty percent rate Multiplier to the water charge and a filtration charge of $0.74 per 100 cu. ft. to arrive at the total monthly charge. No multiplier shall be added to the filtration charge.

ii. For master meters connected west of the Snohomish River, the water charge shall be the same as the Commercial/Industrial/Governmental water rate.

In addition to said water charge and applicable meter charge, there shall be added a twenty percent rate multiplier and a filtration charge of $0.74 per 100 cu. ft. to arrive at the total monthly charge. No multiplier shall be added to the meter charge or the filtration charge.

3. Service Connection Charges. Service connection installations outside the City limits of all sizes shall be charged at the actual cost of the complete installation but in no event shall the charge for a three-quarter inch, a one-inch or a two-inch service be less than the amount charged for service connections within the City limits.

4. Delinquent Penalty and Special Charges. The delinquent penalty and special charges as set forth in Section 12 plus a multiplier of twenty-five percent, shall apply to customers outside the City limits.

Section 13: Where the use of water is such that a portion of all the water delivered to the customer does not discharge into a City sewer due to commercial or industrial use, such as loss by evaporation or any other cause or use in manufactured products, such as ice, canned goods, beverages and the like, no sewer service charge shall be made because of water so used or lost: provided however, the water user shall provide proof as to the amount of sewage discharge and/or install a meter or other measuring device approved by the City Engineer to determine either the amount of sewage discharge or the amount of water used or lost.

Section 14: Where a non-residential metered water customer can demonstrate that its consumption of water is now and will be substantially in excess of surface water impact, the Public Works Director is authorized to adjust the charges for water quality protection and enhancement to adequately reflect any excessive disparity. The burden of proof shall be on the applicant for any adjustment and adjustment shall not be retroactive. The Public Works Director shall develop criteria and procedures for such review.

Section 15: The City of Everett will review the sewer system user charges at least annually and revise the rates as necessary to ensure that adequate revenues are generated to pay the costs of operation and

maintenance including replacement and that the system continues to provide for proportional distribution of costs of operation and maintenance including replacement among users.

Section 16: The City of Everett will notify each user at least annually of the rate being charged for operation and maintenance (including non-capital replacement) of the sewer collection and sewer treatment systems.

Section 17: Ordinance No. 3417-14 (EMC 14.14.020) and 3299-12 (EMC 14.16.710, 711, 712 and 713) shall be repealed upon the effective date of this ordinance; provided that findings relating to sewer system costs under Ordinances 1976-93, 237-73, 627-79, 1264-86, 1437-88, 1538-88, 1538-88, 1834-91, 1871-92, 1933-93, 2142-96, 2189-96, 2366-99, 3096-08, 3156-09, 3299-12 and 3417-14 are incorporated herein for background purposes.

Section 18: Metering Requirements. Washington State Department of Health Water Efficiency Rules, WAC 246-290-496, require every municipal water system with more than 1,000 connections to meter all services by January 22, 2017. The City of Everett may, at any time after the effective date of this ordinance and prior to January 22, 2017, convert existing flat rate services to metered service accounts. At such time, as a flat rate account is converted to metered, beginning with the next scheduled read date, the meter will be read and that account will be billed based on consumption and current rates for domestic metered accounts no later than the next billing cycle.

Section 19: State Utility Tax. The Mayor is authorized to increase or decrease the water charges herein to reflect any change in the State of Washington tax on water system revenues (currently set at 5.029% of system revenues).

Section 20: On April 1, 2014, and thereafter on a biannual basis, the Utilities Superintendent shall submit a review and report of the financial condition of the water utility and City Council shall consider adjustment of rates, based on then current costs including but not limited to changes in the AFSCME Labor Relations agreement wage provisions for the position of Utility Laborer.

Section 21: Domestic water customers will be defined as follows: "All metered water customers, either single family homes or multi-unit dwellings, of which the primary use is that of a structure to house human residents for an extended period of time shall be considered residential customers for the purpose of water billing".

Section 22: Irrigation water customers will be defined as follows: "All metered water services which provide water solely for the purpose of commercial or agricultural irrigation of crops or landscaping shall be considered irrigation accounts for the purpose of water billing".

Section 23: Future Rate Increases. Future increases in the water rates charged herein (except the State of Washington tax on system revenues) may be increased by City Council resolution subject to public hearing and notice of publication thereof at least two weeks in advance of approval of said resolution.

Section 24: The City of Everett will review the water system user charges at least annually and revise the rates as necessary to ensure that adequate water service revenues are generated to pay the costs of operation and maintenance including replacement and that the system continues to provide for proportional distribution of costs of operation and maintenance including replacement among users.

Section 25: Sections 1 through 12 of this Ordinance are to be codified as follows: Sections 1 and 2 – 14.04.020A, Sections 3 and 4 – 14.04.020B, Sections 5 and 6 – 14.04.010C, Sections 7 and 8 – 14.04.020D, Section 9 – 14.16.710, Section 10 – 14.16.711, Section 11 – 14.16.712 and Section 12 – 14.16.713.

Section 26: Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 27: The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references, thereto.

_____
RAY STEPHANSON, MAYOR

ATTEST:

_____
CITY CLERK

Passed: _____

Valid: _____

Published: _____

Effective: _____

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Ordinance repealing Ordinance 3440-15, Section 2 (Everett Municipal Code 14.04.025) relating to discounted rates for water and sewer services for low-income, senior residents.

	Consent
	Action
11/2/16	First Reading
11/9/16	Second Reading
11/16/16	Third Reading
	Public Hearing

COUNCIL BILL #	CB1610-46
Originating Department	Public Works
Contact Person	Matt Welborn
Phone Number	257 - 8974
FOR AGENDA OF	Nov. 2, 2016

Initialed by:
Department Head
CAA db
Council President lm

Location	Preceding Action	Attachments	Department(s) Approval
	Ordinance 3440-15	Amended Ordinance	

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

DETAILED SUMMARY STATEMENT:

Everett Utilities offers discounted rates on water and sewer service for low-income persons of the age of sixty-two years or older and persons qualifying for special parking privileges under RCW 46.19.010 or a blind person as defined in RCW 74.18.020. The State of Washington has raised the low-income thresholds for qualification as per RCW 84.36.381 and Everett Utilities is requesting City Council approve this ordinance matching the State of Washington's new low-income levels and repeal Section 2 of Ordinance 3440-15 (Everett Municipal Code 14.04.025).

RECOMMENDATION (Exact action requested of Council): Request that City Council approve amendments to Ordinance 3440-15 (Everett Municipal Code 14.04.025) relating to discounted rates for water and sewer services for low-income, senior residents.

ORDINANCE NO. _____

An ORDINANCE relating to Discounted Rates for Water and Sewer Service and repealing Section 2 of Ordinance No. 3440-15

WHEREAS, the level of income at which a senior citizen qualifies for discounted water and sewer rates has changed; and

WHEREAS, the City of Everett City Council does desire to provide discounted water and sewer rates for those persons who qualify under new rates;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: Reduced Rates for Low- Income Seniors

Person(s) of the age of sixty-two years or older and person(s) qualifying for special parking privileges under RCW 46.19.010 or a blind person as defined in RCW 74.18.020 shall be eligible to pay a reduced rate for water and sewer single-family residence service based on the income levels as defined in RCW 84.36.381 as it now exits or is hereafter amended. These rates will be revised accordingly with income level changes defined in RCW 84.36.381:

$40,000/yr income or less: 80% of current single-family residence rates;
$35,000/yr income or less: 70% of current single-family residence rates;
$30,000/yr income or less: 60% of current single-family residence rates;

To qualify for the above reduced rates, any applicant must also meet the following requirements:

a. At the time of application for the reduced rates under this section, the applicant must be receiving a verifiable property tax discount from Snohomish County;

b. The applicant must be the owner/occupant of a single-family home serviced by the city of Everett water department; and

c. Only the applicant and/or the applicant's spouse may have income within the household. The total annual combined household income may not exceed thirty-five thousand dollars.

In no case shall the discounted rate for sewer be less than the equivalent share of operation and maintenance (including replacement) of the city's water pollution control facility.

Section 2: Repeal – Codification

Section 2 of Ordinance No. 3440-15 is hereby repealed. Section 1 of this Ordinance shall be codified in Everett Municipal Code 14.04.025.

_____

Ray Stephanson, Mayor

ATTEST:

_____

CITY CLERK

Passed: _____

Valid: _____

Published: _____

Effective: _____

ORDINANCE No. 3440-15

AN ORDINANCE Updating References to State Vehicle Registration Laws and Regulations to Disabled and Overtime Parking, and Amending Ordinances in Section 13.

Whereas, the Everett Municipal Code (the "EMC") makes several references to state laws that were codified in chapter 46.16 of the Revised Code of Washington (the "RCW") (vehicle registration); and

Whereas, chapter 46.16 RCW was repealed and largely recodified under chapter 46.16A RCW and other chapters of the RCW; and

Whereas, the disabled parking regulations were recodified from chapter 46.16 RCW to chapter 46.19 RCW and updated to give local jurisdictions more tools for the enforcement of the regulations; and

Whereas, parking enforcement has found that people parking in violation of downtown parking regulations (either reparking or time restrictions) will use the distinction between a reparking violation and an overtime parking violation to have a parking ticket thrown out (e.g. individuals have been successful in having overtime tickets thrown out by testifying that they moved their vehicle within the posted time limits, even though the movement may still be a violation of reparking regulations); and

Whereas, updating EMC 46.28.200 related to overtime parking to provide that violating reparking restrictions in the central business district is a type of overtime parking eliminates any distinctions between overtime parking and reparking violations, allowing parking enforcement a more efficient tool to enforce against parking violators; and

Whereas, these proposed amendments promote the health, safety, and welfare of the general public; and

Whereas, therefore, City Council finds it is appropriate to update the EMC to accurately reference state laws formerly codified under chapter 46.16 RCW, to track the state's disabled parking regulations, and update the overtime parking regulations;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 3 of Ordinance No. 2442-00, as amended by Section 20 of Ordinance No. 3360-13 (EMC 9.06.135), which reads as follows:

Noise.

A No person shall, without prior written approval of the parks and recreation director or authorized parks department employee, cause or allow to be emitted noise in a park which:

1. Exceeds the maximum permissible noise levels set forth in Sections 20.08.040 and 20.08.050; or

2. Is a motor vehicle noise specifically prohibited by Section 20.08.080(8); or

3. Is a disturbance noise or a nuisance noise.

B. The following sources of sound shall be disturbance noises and are also subject to regulation under the provisions of Sections 20.08.030 through 20.08.050:

1. Frequent, repetitive or continuous noise made by any animal which unreasonably disturbs or interferes with the peace, comfort and repose of park users or nearby residents;

2. The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law;

3. The creation of frequent, repetitive or continuous noise in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine so as to unreasonably disturb or interfere with the peace, comfort or repose of park users or nearby residents;

4. Yelling, shouting, hooting, whistling or singing so as to unreasonably disturb or interfere with the peace, comfort and repose of park users or nearby residents;

5. The use of a sound amplifier or other device capable of producing or reproducing amplified sound, except with prior permission of the parks director or his designee;

6. Sound from motor vehicle audio sound systems, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source; and

7. Sound from audio equipment, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source.

C. "Nuisance noise" means any sound which unreasonably either annoys, injures, interferes with or endangers the comfort, repose, health or safety of park users or nearby residents.

D. No sound source specifically exempted by Chapter 20.08 shall be a disturbance noise or nuisance noise insofar as the particular source is exempted.

E. The provisions of this section shall not apply to regularly scheduled events at parks, such as public address systems for baseball games or park concerts.

F. If the measurement of sound is necessary to determine compliance with this section, such measurement shall be done in accordance with Chapter 20.08.

G. The provisions of this section shall be cumulative and nonexclusive, and shall not affect any other claim, cause of action or remedy; nor, unless specifically provided, shall this section be deemed to repeal, amend or modify any law, ordinance or regulation relating to noise, but shall be deemed additional to existing legislation and common law on noise.

H. For purposes of this section, the following definitions apply:

1. "Motorcycle" means any motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, except farm tractors and such vehicles powered by engines of less than five horsepower.

2. "Motor vehicle" means any vehicle which is self-propelled, used primarily for transporting persons or property upon public highways, and required to be licensed under RCW 46.16.010.

3. "Noise" means the intensity, duration and character of sounds from any and all sources.

4. "Off-highway vehicle" means any self-propelled motor driven vehicle not used primarily for transporting persons or property upon public highways nor required to be licensed under RCW 46.16.010.

5. "Person" means any individual, firm, association, partnership, corporation or any other entity, public or private.

I. Violation of any of the provisions of this section constitutes an infraction, and may be punished by a penalty of not more than two hundred fifty dollars.

Be and the same is hereby amended to read as follows:

Noise.

A No person shall, without prior written approval of the parks and recreation director or authorized parks department employee, cause or allow to be emitted noise in a park which:

1. Exceeds the maximum permissible noise levels set forth in Sections 20.08.040 and 20.08.050; or

2. Is a motor vehicle noise specifically prohibited by Section 20.08.080(8); or

3. Is a disturbance noise or a nuisance noise.

B. The following sources of sound shall be disturbance noises and are also subject to regulation under the provisions of Sections 20.08.030 through 20.08.050:

1. Frequent, repetitive or continuous noise made by any animal which unreasonably disturbs or interferes with the peace, comfort and repose of park users or nearby residents;

2. The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law;

3. The creation of frequent, repetitive or continuous noise in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine so as to unreasonably disturb or interfere with the peace, comfort or repose of park users or nearby residents;

4. Yelling, shouting, hooting, whistling or singing so as to unreasonably disturb or interfere with the peace, comfort and repose of park users or nearby residents;

5. The use of a sound amplifier or other device capable of producing or reproducing amplified sound, except with prior permission of the parks director or his designee;

6. Sound from motor vehicle audio sound systems, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source; and

7. Sound from audio equipment, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source.

C. "Nuisance noise" means any sound which unreasonably either annoys, injures, interferes with or endangers the comfort, repose, health or safety of park users or nearby residents.

D. No sound source specifically exempted by Chapter 20.08 shall be a disturbance noise or nuisance noise insofar as the particular source is exempted.

E. The provisions of this section shall not apply to regularly scheduled events at parks, such as public address systems for baseball games or park concerts.

F. If the measurement of sound is necessary to determine compliance with this section, such measurement shall be done in accordance with Chapter 20.08.

G. The provisions of this section shall be cumulative and nonexclusive, and shall not affect any other claim, cause of action or remedy; nor, unless specifically provided, shall this section be deemed to repeal, amend or modify any law, ordinance or regulation relating to noise, but shall be deemed additional to existing legislation and common law on noise.

H. For purposes of this section, the following definitions apply:

1. "Motorcycle" means any motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, except farm tractors and such vehicles powered by engines of less than five horsepower.

2. "Motor vehicle" means any vehicle which is self-propelled, used primarily for transporting persons or property upon public highways, and required to be registered pursuant to RCW 46.16A.030.

3. "Noise" means the intensity, duration and character of sounds from any and all sources.

4. "Off-highway vehicle" means any self-propelled motor driven vehicle not used primarily for transporting persons or property upon public highways nor required to be registered pursuant to RCW 46.16A.030.

5. "Person" means any individual, firm, association, partnership, corporation or any other entity, public or private.

I. Violation of any of the provisions of this section constitutes an infraction, and may be punished by a penalty of not more than two hundred fifty dollars.

Section 2. Section 1 of Ordinance No. 2908-06 (EMC 14.04.025), which reads as follows:

Reduced rates for low-income senior citizens.

A. Person(s) of the age of sixty-two years or older and person(s) qualifying for special parking privileges under RCW 46.16.381 or a blind person as defined in RCW 74.18.020 shall be eligible to pay a reduced rate for water and sewer single-family residence service:

$35,000/year income or less:	80% of current single-family residence rates
$30,000/year income or less:	70% of current single-family residence rates
$25,000/year income or less:	60% of current single-family residence rates

B. To qualify for the above reduced rates, any applicant must also meet the following requirements:

1. At the time of application for the reduced rates under this section, the applicant must be receiving a verifiable property tax discount from Snohomish County;

2. The applicant must be the owner/occupant of a single-family home serviced by the city of Everett water department; and

3. Only the applicant and/or the applicant's spouse may have income within the household. The total annual combined household income may not exceed thirty-five thousand dollars.

C. In no case shall the discounted rate for sewer be less than the equivalent share of operation and maintenance (including replacement) of the city's water pollution control facility.

Be and the same is hereby amended to read as follows:

Reduced rates for low-income senior citizens.

A. Person(s) of the age of sixty-two years or older and person(s) qualifying for special parking privileges under RCW 46.19.010 or a blind person as defined in RCW 74.18.020 shall be eligible to pay a reduced rate for water and sewer single-family residence service based on the income levels as defined in RCW 84.36.381 which are currently:

$~~35,000~~40,000/year income or less:	80% of current single-family residence rates
$~~30,000~~35,000/year income or less:	70% of current single-family residence rates

$~~25,000~~30,000/year income or less:	60% of current single-family residence rates

B. To qualify for the above reduced rates, any applicant must also meet the following requirements:

1. At the time of application for the reduced rates under this section, the applicant must be receiving a verifiable property tax discount from Snohomish County;

2. The applicant must be the owner/occupant of a single-family home serviced by the city of Everett water department; and

3. Only the applicant and/or the applicant's spouse may have income within the household. The total annual combined household income may not exceed thirty-five thousand dollars.

C. In no case shall the discounted rate for sewer be less than the equivalent share of operation and maintenance (including replacement) of the city's water pollution control facility.

Section 3. Section 2 of Ordinance No. 534-78, as amended by Section 2 of Ordinance No. 690-80, as amended by Section 1 of Ordinance No. 1556-89, (EMC 20.08.020), which reads as follows:

Definitions .

All technical terminology used in this chapter not defined herein shall be interpreted in conformance with American National Standards Institute Specifications, Section 1.1-1960 and Section 1.4-1971. For purposes of this chapter, the words and phrases used herein shall have the meaning indicated below:

A. "Administrator" means the noise control administrator as established in Section 20.08.130.

B. "dB(A)" means a sound level, measured in decibels, using the A frequency-weighting network of a sound level meter.

C. "District" means the land use zones to which the provisions of this chapter are applied. For the purposes of this chapter the following noise control districts shall be established which include land use zones designated in the Everett zoning code as follows:

Noise Control District	**Land Use Zones**
1. District I	All residentially zoned districts including but not limited to R.S., R-1, R-2, R-

Noise Control District	Land Use Zones
	3(A), R-4 and R-5.
2. District II	All business and commercially zoned districts including but not limited to B-1, B-2(A), B-2, B-2(8), B-3, C-1 and C-2.
3. District III	All agricultural and manufacturing zoned districts including but not limited to A, M-M and M-1, and all other nonresidential, nonbusiness and noncommercially zoned districts.

D. "Emergency work" means work made necessary to restore property to a safe condition following a public calamity, work required to protect persons or property from imminent exposure to danger, or work by private or public utilities for providing or restoring immediately necessary utility service.

E. "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the recommended maximum loaded weight of a combination vehicle.

F. "Gross vehicle weight rating" means the value specified by the manufacturer as the recommended maximum loaded weight of a single vehicle.

G. "Motorcycle" means any motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, except farm tractors and such vehicles powered by engines of less than five horsepower.

H. "Motor vehicle" means any vehicle which is self-propelled, used primarily for transporting persons or property upon public highways, and required to be licensed under RCW 46.16.010. (Aircraft, watercraft, and vehicles used on rails or tracks are not motor vehicles as that term is used herein.)

I. "New motor vehicle" means a motor vehicle manufactured after December 31, 1976, the equitable or legal title of which has never been transferred to a person who, in good faith, purchases the new motor vehicle for purposes other than resale.

J. "Noise" means the intensity, duration and character of sounds from any and all sources.

K. "Off-highway vehicle" means any self-propelled motor driven vehicle not used primarily for transporting persons or property upon public highways nor required to be licensed under RCW 46.16.010

L. "Person" means any individual, firm, association, partnership, corporation or any other entity, public or private.

M. "Property boundary" means the survey line at ground surface which separates the real property owned, rented or leased by one or more other persons and its vertical extension.

N. "Public nuisance noise" means any sound which unreasonably either annoys, injures, interferes with or endangers the comfort, repose, health or safety of three or more persons residing within separate residences in the same community or neighborhood, although the extent of damage may be unequal.

0. "Receiving property" means real property within which sound originating from sources outside the property is received.

P. "Sound level" means a weighted sound pressure level obtained by the use of a sound level meter and weighted as specified in American National Standards Institute Specifications, Section 1.4-1971.

Q. "Sound level meter" means a sound-level measuring device, either Type I or Type II, as defined by American National Standards Institute Specifications, Section 1.4-1971.

R. "Watercraft" means any contrivance, excluding aircraft, used or capable of being used as a means of transportation or recreation on water.

S. "Weekend" means Saturday and Sunday or any legal holiday.

Be and the same is hereby amended to read as follows:

Definitions.

All technical terminology used in this chapter not defined herein shall be interpreted in conformance with American National Standards Institute Specifications, Section 1.1-1960 and Section 1.4-1971. For purposes of this chapter, the words and phrases used herein shall have the meaning indicated below:

A. "Administrator" means the noise control administrator as established in Section 20.08.130.

B. "dB(A)" means a sound level, measured in decibels, using the A frequency-weighting network of a sound level meter.

C. "District" means the land use zones to which the provisions of this chapter are applied. For the purposes of this chapter the following noise control districts shall be established which include land use zones designated in the Everett zoning code as follows:

Noise Control District	Land Use Zones
1. District I	All residentially zoned districts including but not limited to R.S., R-1, R-2, R-3(A), R-4 and R-5.
2. District II	All business and commercially zoned districts including but not limited to B-1, B-2(A), B-2, B-2(8), B-3, C-1 and C-2.
3. District III	All agricultural and manufacturing zoned districts including but not limited to A, M-M and M-1, and all other nonresidential, nonbusiness and noncommercially zoned districts.

D. "Emergency work" means work made necessary to restore property to a safe condition following a public calamity, work required to protect persons or property from imminent exposure to danger, or work by private or public utilities for providing or restoring immediately necessary utility service.

E. "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the recommended maximum loaded weight of a combination vehicle.

F. "Gross vehicle weight rating" means the value specified by the manufacturer as the recommended maximum loaded weight of a single vehicle.

G. "Motorcycle" means any motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, except farm tractors and such vehicles powered by engines of less than five horsepower.

H. "Motor vehicle" means any vehicle which is self-propelled, used primarily for transporting persons or property upon public highways, and required to be registered pursuant to RCW 46.16A.030. (Aircraft, watercraft, and vehicles used on rails or tracks are not motor vehicles as that term is used herein.)

I. "New motor vehicle" means a motor vehicle manufactured after December 31, 1976, the equitable or legal title of which has never been transferred to a person who, in good faith, purchases the new motor vehicle for purposes other than resale.

J. "Noise" means the intensity, duration and character of sounds from any and all sources.

K. "Off-highway vehicle" means any self-propelled motor driven vehicle not used primarily for transporting persons or property upon public highways nor required to be registered pursuant to RCW 46.16A.030.

L. "Person" means any individual, firm, association, partnership, corporation or any other entity, public or private.

M. "Property boundary" means the survey line at ground surface which separates the real property owned, rented or leased by one or more other persons and its vertical extension.

N. "Public nuisance noise" means any sound which unreasonably either annoys, injures, interferes with or endangers the comfort, repose, health or safety of three or more persons residing within separate residences in the same community or neighborhood, although the extent of damage may be unequal.

0. "Receiving property" means real property within which sound originating from sources outside the property is received.

P. "Sound level" means a weighted sound pressure level obtained by the use of a sound level meter and weighted as specified in American National Standards Institute Specifications, Section 1.4-1971.

Q. "Sound level meter" means a sound-level measuring device, either Type I or Type II, as defined by American National Standards Institute Specifications, Section 1.4-1971.

R. "Watercraft" means any contrivance, excluding aircraft, used or capable of being used as a means of transportation or recreation on water.

S. "Weekend" means Saturday and Sunday or any legal holiday.

Section 4. Section 1 of Ordinance No. 993-83, as amended by Section 1 of Ordinance No. 1068-84, as amended by Subsection A of Section 1 of Ordinance No. 1531-88, as amended by Subsection A of Section 1 of Ordinance No. 2396-99,

as amended by Subsection A of Section 1 or Ordinance No. 3028-07, as amended by Subsection A of Section 1 of Ordinance No. 3388-14 (EMC 46.10.010.A), which reads as follows:

Officers authorized to remove certain vehicles.

A. Impoundments. Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504, the vehicle is subject to impoundment at the direction of a law enforcement officer. In addition, a police officer or parking enforcement officer may take custody of a vehicle and provide for its prompt removal to a place of safety under any of the following circumstances:

1. Whenever any police officer or parking enforcement officer finds a vehicle stopped or parked upon any roadway or alley, whether attended or unattended, the officer is authorized to provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway or alley or away from the main traveled portion thereof;

2. . Whenever any police officer or parking enforcement officer finds a vehicle unattended upon any highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

3. Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of any vehicle involved in an accident is physically or mentally incapable, or too intoxicated, to decide upon steps to be taken to protect his or her property;

4. Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

5. Whenever a police officer discovers a vehicle which he determines to be a stolen vehicle;

6. Whenever any police officer or parking enforcement officer finds a vehicle standing or parked in a designated towaway zone;

7. Whenever a police officer or parking enforcement officer finds a vehicle without a special license plate, placard, or decal indicating that the vehicle is being used to transport a disabled person under RCW 46.16.381 parked in a stall or space that is clearly and conspicuously marked, as described in the city's parking ordinance, as a parking space or stall for a disabled person, on private property without charge or on public property;

8. Whenever any police officer or parking enforcement officer finds a vehicle standing or parked in a fire lane or within fifteen feet of any fire hydrant whether on public or private property;

9. Whenever a police officer or parking enforcement officer finds a vehicle parked in a public right-of-way or on other publicly owned or controlled property in violation of any law, ordinance or regulation and there are four or more parking infractions issued against the vehicle for each of which a person has failed to respond, failed to appear at a requested hearing, or failed to pay an adjudicated parking infraction for at least forty-five days from the date of the filing of the notice of infraction;

10. Whenever a police officer or parking enforcement officer determines that a person is operating a motor vehicle without a valid driver's license or, if required by Chapter 46.20 RCW, a specially endorsed driver's license, or with a license that has been expired for ninety days or more;

11. Whenever a police officer or parking enforcement officer determines that the vehicle has an expired registration of more than forty-five days and is parked on a public street;

12. Whenever a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone.

Vehicles subject to impoundment under these or other sections are declared to be public nuisances which may be summarily abated as provided in each instance and except where prohibited by law.

Nothing in this section shall derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator as defined in RCW 46.55.01 O(B).

Be and the same is hereby amended to read as follows:

Officers authorized to remove certain vehicles.

A. Impoundments. Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504, the vehicle is subject to impoundment at the direction of a law enforcement officer. In addition, a police officer or parking enforcement officer may take custody of a vehicle and provide for its prompt removal to a place of safety under any of the following circumstances:

1. Whenever any police officer or parking enforcement officer finds a vehicle stopped or parked upon any roadway or alley, whether attended or unattended, the officer is authorized to provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway or alley or away from the main traveled portion thereof;

2. Whenever any police officer or parking enforcement officer finds a vehicle unattended upon any highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

3. Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of any vehicle involved in an accident is physically or mentally incapable, or too intoxicated, to decide upon steps to be taken to protect his or her property;

4. . Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

5. Whenever a police officer discovers a vehicle which he determines to be a stolen vehicle;

6. Whenever any police officer or parking enforcement officer finds a vehicle standing or parked in a designated towaway zone;

7. Whenever a police officer or parking enforcement officer finds a vehicle without a special license plate, parking placard, or special year tab indicating that the vehicle is being used to transport a disabled person pursuant to chapter 46.19 RCW parked in a stall or space that is clearly and conspicuously marked, as described in the city's parking ordinance, as a parking space or stall for a disabled person, on private property without charge or on public property;

8. Whenever any police officer or parking enforcement officer finds a vehicle standing or parked in a fire lane or within fifteen feet of any fire hydrant whether on public or private property;

9. Whenever a police officer or parking enforcement officer finds a vehicle parked in a public right-of-way or on other publicly owned or controlled property in violation of any law, ordinance or regulation and there are four or more parking infractions issued against the vehicle for each of which a person has failed to respond, failed to appear at a requested hearing, or failed to pay an adjudicated parking infraction for at least forty-five days from the date of the filing of the notice of infraction;

10. Whenever a police officer or parking enforcement officer determines that a person is operating a motor vehicle without a valid driver's license or, if required by Chapter 46.20 RCW, a specially endorsed driver's license, or with a license that has been expired for ninety days or more;

11. Whenever a police officer or parking enforcement officer determines that the vehicle has an expired registration of more than forty-five days and is parked on a public street;

12. Whenever a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone.

Vehicles subject to impoundment under these or other sections are declared to be public nuisances which may be summarily abated as provided in each instance and except where prohibited by law.

Nothing in this section shall derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator as defined in RCW 46.55.010.

Section 5. Section 7 of Ordinance No. 2180-96, as amended by Section 2 of Ordinance No. 2317-98, as amended by Section 3 of Ordinance No. 3125-09 (EMC 46.28.070), which reads as follows:

Parking for disabled persons.

A A person who has received a current and valid special disabled person's card, decal or license plate from the Washington State Department of Licensing under RCW 46.16.381 shall be allowed to park a vehicle being used to transport such person in metered parking spaces free of charge and in nonmetered spaces for unlimited periods of time in parking zones or areas which are otherwise restricted as to the length of time parking is permitted except as otherwise provided in subsection B of this section. This section shall have no application to those zones or areas in which the stopping, parking or standing of all vehicles is prohibited or which are reserved for special types of vehicles. Such person shall not be permitted the foregoing privilege unless the person obtains and displays a distinguishing card, decal, or license plate issued pursuant to RCW 46.16.381.

B. No person shall stop, stand or park a vehicle in a parking space reserved for disabled persons provided on-street or on private property without charge without obtaining and displaying a special license plate, card, or decal issued pursuant to RCW 46.16.381. Pursuant to RCW 46.16.381, a time limitation of four hours may be imposed on the use of such parking spaces for on-street parking when such time restricted is clearly posted. A time restriction of four hours may be imposed on the

use of nonreserved, on-street parking spaces (metered or nonmetered) by vehicles displaying the special parking placards when such time restriction is clearly posted.

C. A parking space or stall for a disabled person shall be identified as described in RCW 46.61.581 including fine, time limitation (if applicable), and tow-away information. Notwithstanding any provision in this chapter, in accordance with RCW 46.61.581, failure of the person owning or controlling the property where required parking spaces are located to erect and maintain the sign is a Class 2 civil infraction under Chapter 7.80 RCW for each parking space that should be so designated. The person owning or controlling the property where the required parking spaces are located shall ensure that the parking spaces are not blocked or made inaccessible, and failure to do so is a Class 2 civil infraction.

D. No person shall make inaccessible the access aisle located next to a space reserved for physically disabled persons.

E. Notwithstanding any provision in this chapter, the city's police department is authorized to appoint volunteers, with a limited commission, to issue notices of infractions for violations of the city's disabled parking regulations. Volunteers must be at least twenty-one years of age and meet such additional qualifications as established by the city's police department. A notice of infraction issued by a volunteer appointed under this section has the same force and effect as a notice of infraction issued by police officers and parking enforcement officers for a violation of the city's disabled parking regulations.

Be and the same is hereby amended to read as follows:

Parking for disabled persons.

A. **Authority.** A person who has been issued current and valid special license plates, parking placards, or special year tabs for persons with disabilities from the Washington State Department of Licensing pursuant to chapter 46.19 RCW shall be allowed to park a vehicle being used to transport such person in places reserved for persons with physical disabilities, metered parking spaces free of charge, and in nonmetered spaces for unlimited periods of time in parking zones or areas which are otherwise restricted as to the length of time parking is permitted except as otherwise provided in subsection D of this section. This section shall have no application to those zones or areas in which the stopping, parking or standing of all vehicles is prohibited or which are reserved for special types of vehicles.

B. **Display.** Valid special license plates, parking placards, and special year tabs for persons with disabilities must be displayed in accordance with this subsection.

1. License plates for persons with disabilities must be displayed on the motor vehicle as standard issue license plates in accordance with RCW 46.16A.200.

2. A parking placard must include both a serial number and the expiration date on the face of the placard. The expiration date and serial number must be of a sufficient size to be easily visible from a distance of ten feet from where the placard is displayed.

3. A parking placard must be displayed when the motor vehicle is parked by suspending it from the rearview mirror. In the absence of a rearview mirror, the parking placard must be displayed on the dashboard. The parking placard must be displayed in a manner that allows for the entire placard to be viewed through the vehicle windshield.

4. Special year tabs for persons with disabilities must be displayed on license plates as defined by the Washington State Department of Licensing.

C. **Restrictions - Prohibitions - Violations.**

1. False information. Knowingly providing false information in conjunction with the application for special parking privileges for persons with disabilities pursuant to chapter 46.19 RCW is a gross misdemeanor punishable in accordance with EMC 10.04.080.

2. Unauthorized use. Any unauthorized use of a parking placard, special license plate, special year tab, or identification card issued pursuant to chapter 46.19 RCW is a parking infraction. "Unauthorized use" includes (a) any use of a parking placard, special license plate, special year tab, or identification card that is expired, inactive, faked, forged, or counterfeited, (b) any use of a parking placard, special license plate, special year tab, or identification card of another holder if the initial holder is no longer eligible to use or receive it, and (c) any use of a parking placard, special license plate, special year tab, or identification card of another holder even if permitted to do so by the holder.

3. Parking without placard/plate/tab. It is a parking infraction for any person to stop, stand, or park a vehicle in a parking space reserved for persons with physical disabilities on private property without charge or on public property, without a placard, special license plate, or special year tab issued pursuant to chapter 46.19 RCW. If a person is charged with a violation of this subsection, the person will not be determined to have committed an infraction if the person establishes that the person operating the vehicle or being transported at the time of the infraction had a valid placard, special license plate, or special year tab issued pursuant to chapter 46.19 RCW. Such person must sign a statement under penalty of perjury that the placard, special license plate, or special year tab produced prior to the court appearance was valid at the time of infraction and issued pursuant to chapter 46.19 RCW.

4. Inaccessible access. It is a parking infraction for a person to stop, stand, or park a vehicle in, block, or otherwise make inaccessible the access aisle located next to a space reserved for persons with physical disabilities.

5. Improper display of placard/plate/tab. It is a parking infraction to fail to fully display a placard, special license plate, or special year tab issued pursuant to chapter 46.19 RCW while parked in a space reserved for persons with physical disabilities on private property without charge or on public property, or while parking free of charge as otherwise allowed under this section. "Fully display" means hanging or placing the placard, special license plate, or special year tab so that the full face of the placard, license plate, or tab is visible, including the serial number and expiration date on the placard. If a person is charged with a violation of this subsection, that person will not be determined to have committed an infraction if the person produces in court or before the court appearance a valid identification card issued to the person pursuant to chapter 46.19 RCW.

6. Illegal obtainment. Except as provided in subsection C.1 of this section, it is a misdemeanor punishable in accordance with EMC 10.04.080 for any person to willfully obtain a special license plate, placard, special year tab, or identification card issued pursuant to chapter 46.19 RCW in a manner other than that established by chapter 46.19 RCW.

7. Sale of placard/plate/tab/card. It is a misdemeanor punishable in accordance with RCW 10.04.080 for any person to sell a placard, special license plate, special year tab, or identification card issued pursuant to 46.19 RCW.

D. Pursuant to RCW 46.19.050, a time limitation of four hours may be imposed on the use of nonreserved, on-street parking spaces (metered or nonmetered) by vehicles displaying special parking placards, special license plates, or special year tabs when such time restriction is clearly posted.

E. A parking space or stall for a disabled person shall be identified as described in RCW 46.61.581 including fine, time limitation (if applicable), and tow-away information. Notwithstanding any provision in this chapter, in accordance with RCW 46.61.581, failure of the person owning or controlling the property where required parking spaces are located to erect and maintain the sign is a Class 2 civil infraction under Chapter 7.80 RCW for each parking space that should be so designated. The person owning or controlling the property where the required parking spaces are located shall ensure that the parking spaces are not blocked or made inaccessible, and failure to do so is a Class 2 civil infraction.

F. Notwithstanding any provision in this chapter, the city's police department is authorized to appoint volunteers, with a limited commission, to issue notices of infractions for violations of subsections C.2-5 and subsection E of this section. Volunteers must be at least twenty-one years of age and meet such additional qualifications as established by the city's police department. A notice of infraction issued by a volunteer appointed under this section has the same force and effect as a notice of infraction issued by police officers and parking enforcement officers for the same offense. A police officer, parking enforcement officer, or volunteer may request a person to show the person's identification card or special parking placard

when investigating the possibility of a violation of this section. If the request is refused the person in charge of the vehicle may be issued a notice of infraction for a violation of this section.

G. If a person is found to have violated the special parking privileges provided in this section, and unless an appeal of that finding is pending, a judge may order that the person surrender his or her placard, special license plate, special year tab, or identification card issued pursuant to chapter 46.19 RCW.

Section 6. Section 20 of Ordinance No. 2180-96, as amended by Section 1 of Ordinance No. 2395-99, as amended by Section 2 of Ordinance No. 2691-03, as amended by Section 5 of Ordinance No. 2826-05 (EMC 46.28.200), which reads as follows:

Time Zones.

No person shall stop, stand or park a vehicle in a parking space beyond the time permitted by official signs.

Be and the same is hereby amended to read as follows:

Overtime Parking.

No person shall stop, stand, or park a vehicle in a parking space beyond the time permitted by official signs. In addition to stopping, standing, or parking a vehicle in a parking space beyond the time permitted by official signs, it is a violation of this section to stop, stand, or park a vehicle in violation of the reparking regulations set forth in EMC 46.28.205.

Section 7. Section 27 of Ordinance No. 2180-96, as amended by Section 1 of Ordinance No. 2317-98, as amended by Section 2 of Ordinance No. 2395-99, as amended by Section 1 of Ordinance No. 2725-03, as amended by Section 2 of Ordinance No. 2795-04, as amended by Section 10 of Ordinance No. 2826-05, as amended by Section 7 of Ordinance No. 3125-09 (EMC 46.28.270), which reads as follows:

Penalties for parking infractions.

A. Unless specifically set forth elsewhere in this chapter, the penalties for each violation of the provisions of this chapter shall be:

1. Overtime parking: twenty dollars;

2. Unauthorized parking in alley: twenty dollars;

3. Parking in disabled space without requisite permit, decal, or license plate, or making inaccessible the access aisle located next to a disabled space: two hundred fifty dollars;

4. Parking, stopping or standing in a marked fire lane or fire zone in violation of this chapter: fifty dollars;

5. Interfering with, concealing, obliterating or erasing marks in violation of this chapter: fifty dollars;

6. All other violations: twenty dollars.

B. Unless otherwise directed by the court, payment of all parking infractions shall be made to the municipal court and at such other locations as designated by the court. All proceeds derived from individuals charged with a violation of any of the provisions of this chapter shall be paid into the downtown improvement fund established by the city; however, the proceeds from the penalty for parking in a disabled space without the requisite permit, placard or license plate, or making inaccessible the access aisle located next to a disabled space, will be retained by the city in accordance with RCW 46.16.381 and shall be used exclusively for law enforcement.

C. After receiving three tickets in three hundred sixty-five days, the penalty for each additional ticket beyond three received within said time period shall be as follows:

1. For each twenty-dollar penalty violation defined in subsection A of this section, the penalty shall be thirty dollars;

2. For each fifty-dollar penalty violation defined in subsection A of this section, the penalty shall be seventy-five dollars.

After receiving six tickets in three hundred sixty-five days, the penalty for each additional ticket received within said time period shall be as follows:

1. For each twenty-dollar penalty violation defined in subsection A of this section, the penalty shall be fifty dollars;

2. For each fifty-dollar penalty violation defined in subsection A of this section, the penalty shall be one hundred twenty-five dollars.

D. Additionally, there is a penalty for failure to respond to notice of a parking infraction within thirty days of the violation date on the notice of infraction, which shall be twenty-five dollars.

E. For a second or subsequent violations of the disabled parking provisions of this chapter, in addition to the monetary fine, the violator must complete a minimum of forty hours of:

1. Community service for a nonprofit organization that serves the disabled community or persons having disabling diseases; or

2. Any other community service that may sensitize the violator to the needs and obstacles faced by persons who have disabilities.

F. The court may not suspend more than one-half of any fine imposed for a disabled parking violation.

Be and the same is hereby amended to read as follows:

Penalties for parking infractions.

A Unless specifically set forth elsewhere in this chapter, the penalties for each violation of the provisions of this chapter shall be:

1. Overtime parking: twenty dollars;

2. Unauthorized parking in alley: twenty dollars;

3. Disabled parking infractions under EMC 46.28.070.C: two hundred fifty dollars and an additional two hundred dollar assessment pursuant to RCW 46.19.050 for a total of four hundred and fifty dollars;

4. Parking, stopping or standing in a marked fire lane or fire zone in violation of this chapter: fifty dollars;

5. Interfering with, concealing, obliterating or erasing marks in violation of this chapter: fifty dollars;

6. All other violations: twenty dollars.

B. Unless otherwise directed by the court, payment of all parking infractions shall be made to the municipal court and at such other locations as designated by the court. All proceeds derived from individuals charged with a violation of any of the provisions of this chapter shall be paid into the downtown improvement fund established by the city; however, the proceeds from penalties and assessments related to disabled parking infractions will be retained by the city or distributed in accordance with RCW 46.19.050.

C. After receiving three tickets in three hundred sixty-five days, the penalty for each additional ticket beyond three received within said time period shall be as follows:

1. For each twenty-dollar penalty violation defined in subsection A of this section, the penalty shall be thirty dollars;

2. For each fifty-dollar penalty violation defined in subsection A of this section, the penalty shall be seventy-five dollars.

After receiving six tickets in three hundred sixty-five days, the penalty for each additional ticket received within said time period shall be as follows:

1. For each twenty-dollar penalty violation defined in subsection A of this section, the penalty shall be fifty dollars;

2. For each fifty-dollar penalty violation defined in subsection A of this section, the penalty shall be one hundred twenty-five dollars.

D. Additionally, there is a penalty for failure to respond to notice of a parking infraction within thirty days of the violation date on the notice of infraction, which shall be twenty-five dollars.

E. For a second or subsequent violations of the disabled parking provisions of this chapter, in addition to the monetary fine, the violator must complete a minimum of forty hours of:

1. Community service for a nonprofit organization that serves the disabled community or persons having disabling diseases; or

2. Any other community service that may sensitize the violator to the needs and obstacles faced by persons who have disabilities.

F. The court may not suspend more than one-half of any fine imposed for a disabled parking infraction issued pursuant to EMC 46.28.070.C. Any reduction in any penalty and assessment imposed pursuant to EMC 46.28.270.A.3 must be applied proportionally between the penalty and the assessment. When a reduced penalty is imposed the amount deposited in the accounts identified under RCW 46.19.050(7) must be reduced equally and proportionally.

Section 8. Section 2 of Ordinance No. 2784-04, as amended by Section 1 of Ordinance No. 3139-09 (EMC 46.80.020), which reads as follows:

Definitions-Exemption.

A. "Motorized foot scooter" means a device with no more than two ten-inch or smaller diameter wheels that has handlebars, is designed to be stood or sat upon by the operator, and is powered by an internal combustion engine or electric motor that is capable of propelling the device with or without human propulsion at a speed of no more than twenty miles per hour on level ground.

B. "Wheeled recreational device" means any wheeled recreational object designed to propel the person using that object with an internal combustion engine or electric motor, whether it be stood or sat upon or ridden in, and that is not required to obtain

and display a Washington State vehicle license (Chapter 46.16 RCW). For purposes of this chapter, "wheeled recreational device" does not include motorcycles (RCW 46.04.330), motor driven cycles (RCW 46.04.332), mopeds (RCW 46.04.304), electric assisted bicycles (RCW 46.04.169), electric personal mobility devices (RCW 46.04.1695), or power wheelchairs (RCW 46.04.415).

C. "City street" means every public highway, as defined in Chapter 46.04 RCW, or part thereof located within the city limits of the city of Everett.

D. "City property" includes all city rights-of-way, as defined in the city of Everett zoning code.

E. "Rules of the road" means all rules applicable to vehicle or pedestrian traffic as set forth in state statute, rule or regulation.

F. "Helmet" means a protective covering for the head consisting of a hard outer shell, padding adjacent to and inside the outer shell, and a neck or chinstrap type retention system, with a label required by the Federal Consumer Products Safety Commission standards for bicycle helmets as adopted by the Code of Federal Regulations, 16 CFR 1203, and which is marked with durable labeling in accordance with 16 CFR 1203.6.

G. The regulations of this chapter shall not apply to any vehicle used by a disabled person as defined by RCW 46.16.381.

Be and the same is hereby amended to read as follows:

Definitions-Exemption.

A. "Motorized foot scooter" means a device with no more than two ten-inch or smaller diameter wheels that has handlebars, is designed to be stood or sat upon by the operator, and is powered by an internal combustion engine or electric motor that is capable of propelling the device with or without human propulsion at a speed of no more than twenty miles per hour on level ground.

B. "Wheeled recreational device" means any wheeled recreational object designed to propel the person using that object with an internal combustion engine or electric motor, whether it be stood or sat upon or ridden in, and that is not required to obtain and display a Washington State vehicle license (Chapter 46.16A RCW). For purposes of this chapter, "wheeled recreational device" does not include motorcycles (RCW 46.04.330), motor driven cycles (RCW 46.04.332), mopeds (RCW 46.04 .304), electric assisted bicycles (RCW 46.04.169), electric personal mobility devices (RCW 46.04.1695), or power wheelchairs (RCW 46.04.415).

C. "City street" means every public highway, as defined in Chapter 46.04 RCW, or part thereof located within the city limits of the city of Everett.

D. "City property" includes all city rights-of-way, as defined in the city of Everett zoning code.

E. "Rules of the road" means all rules applicable to vehicle or pedestrian traffic as set forth in state statute, rule or regulation.

F. "Helmet" means a protective covering for the head consisting of a hard outer shell, padding adjacent to and inside the outer shell, and a neck or chinstrap type retention system, with a label required by the Federal Consumer Products Safety Commission standards for bicycle helmets as adopted by the Code of Federal Regulations, 16 CFR 1203, and which is marked with durable labeling in accordance with 16 CFR 1203.6.

G. The regulations of this chapter shall not apply to any vehicle used by a disabled person in accordance with chapter 46.19 RCW.

Section 9. Severability

Should any section, subsection, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation. The City Council of the City of Everett hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

Section 10. General Duty

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Section 11. Savings

The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 12. Corrections

The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

Section 13. This Ordinance amends the following ordinances as amended: 2442-00, 2908-06, 534-78, 993-83, 2180-96, and 2784-04.

Ray Stephanson, Mayor

ATTEST:

City Clerk

Passed: 6-17-15

Valid: 6-19-15

Published: 6-24-15

Effective Date: 7/04/15

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.

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	✓	Matt Welborn	✓
Manager	✓	Heather Magnuson	HM 10/12
Department Head	✓		

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 15, 2016 through October 21, 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	139,213.85
003	Legal	1,040.00
004	Administration	4,423.43
005	Municipal Court	3,319.58
007	Human Resources	316.66
009	Misc Financial Funds	78,132.42
010	Finance	316.66
015	Information Technology	8.39
021	Planning & Community Developmer	59.68
022	Neighborhoods & Community Serv	300.00
024	Public Works-Engineering	20,138.59
027	Senior Center	938.33
031	Police	10,761.76
032	Fire	3,210.35
038	Facilities/Maintenance	4,693.99
	TOTAL GENERAL FUND	**266,873.69**
101	Parks & Recreation	52,557.11
110	Library	15,881.91
114	Conference Center	3,468.56
120	Public Works-Streets	21,743.44
126	MV-Equipment Replacement Reser	31,126.51

Fund	Department	Amount
145	Real Property Acquisition	13.32
146	Property Management	7,705.44
148	Cum Reserve-Parks	0.07
149	Senior Center Reserve	1,470.80
151	Fund for Animals	317.50
152	Cum Reserve-Library	1,265.19
153	Emergency Medical Services	812.07
156	Criminal Justice	5,293.86
197	CHIP Loan Program	775.00
303	PW Improvement Projects	394,143.53
308	Riverfront Development	123,591.58
336	Water & Sewer Sys Improv Project	606,326.54
338	Solid Waste Improvments	-6,179.58
342	City Facilities Construction	85,444.00
401	Public Works-Utilities	517,980.58
402	Solid Waste Utility	98.01
425	Public Works-Transit	421,609.51
430	Everpark Garage	222.49
440	Golf	12,513.59
501	MVD-Transportation Services	154,134.32
503	Self-Insurance	82,314.24
505	Computer Reserve	158.33
507	Telecommunications	17,824.62
508	Health Benefits Reserve	6,737.50
637	Police Pension	41,802.74
638	Fire Pension	42,031.76
661	Claims	47,108.30
	TOTAL CLAIMS	**2,957,166.53**

Passed and approved this _____day of _____ , 2016.

_____
Councilperson Introducing Resolution

_____
Council President

RESOLUTION NO. _____

Be it resolved by the City Council of the City of Everett:

That the payroll of the employees of the City of Everett as of October 15, 2016, and checks issued October 21, 2016, having been audited, be and the same is hereby approved and the proper officers are hereby authorized and directed to charge checks on the Payroll Fund in payment thereof:

Fund	Department	Gross Payroll	Employer Contributions
001	Legislative	10,565.76	$5,547.53
003	Legal	$56,786.05	19,292.62
004	Administration	50,679.16	14,218.19
005	Municipal Court	46,893.05	18,978.72
007	Personnel	47,576.40	17,397.22
010	Finance	54,865.10	20,717.67
015	Information Technology	52,601.54	19,677.49
021	Planning & Community Dev	42,456.61	13,976.90
022	Neighborhoods & Community Svcs	4,955.55	2,237.54
024	Public Works	153,322.05	58,353.44
026	Animal Shelter	36,696.33	13,348.72
027	Senior Center	10,954.98	4,012.53
031	Police	798,863.52	242,900.48
032	Fire	578,039.54	170,217.23
038	Facilities/Maintenance	66,600.76	29,389.75
101	Parks & Recreation	182,633.10	71,971.56
110	Library	118,281.86	40,952.00
112	Community Theatre	6,959.51	3,092.84
120	Street	63,452.54	27,071.18
153	Emergency Medical Services	157,074.66	47,611.22
197	CHIP	9,034.00	3,909.38
198	Community Dev Block	6,504.95	2,252.10
401	Utilities	650,790.54	257,959.22
425	Transit	370,224.35	154,695.01
440	Golf	26,931.88	9,621.17
501	Equip Rental	62,934.22	26,354.91
507	Telecommunications	10,372.18	4,119.49
		$3,677,050.19	$1,299,876.11

_____
Councilperson Introducing Resolution

Passed and approved this _____ day of _____ , 2016.

_____
Council President

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Call for Bids 2016-081 for the purchase of Transit Uniforms

_____	Briefing
_____	Proposed Action
X	Consent
_____	Action
_____	First Reading
_____	Second Reading
_____	Third Reading
_____	Public Hearing

COUNCIL BILL #	
Originating Department	Finance/Purchasing
Contact Person	Clark Langstraat
Phone Number	(425) 257-8901
FOR AGENDA OF	November 2, 2016

Initialed by:
Department Head _____
CAA _____
Council President _____

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
			Transit, Finance/Purchasing

Amount Budgeted	$110,000.00	
Expenditure Required	-0-	Account Number(s): 425 508 108 00080 260
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
Everett Transit desires to enter into a contract with a vendor to provide Transit uniforms for a period of three years with the option of two one-year extensions. Cost of the uniform items over the initial three-year term is estimated at $110,000 annually.

RECOMMENDATION (Exact action requested of Council):
Authorize Call for Bids 2016-081 for purchase of Transit uniforms.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Final Acceptance & Certification of Completion with Allied Construction Associates, Inc. for the Water Main "P" Replacement Project

_____	Briefing	COUNCIL BILL #	
_____	Proposed Action	Originating Department	Public Works
_____	Consent	Contact Person	Mike Kangas
_____	Action	Phone Number	425-257-7731
_____	First Reading	FOR AGENDA OF	November 2, 2016
_____	Second Reading		
_____	Third Reading		
_____	Public Hearing	Initialed by:	
_____	Budget Advisory	Department Head	
		CAA	
		Council President	

Location	Preceding Action	Attachments	Department(s) Approval
See attached Vicinity Map	12/8/2015 Bid 1/13/2016 Award 6/24/2016 CO #1 8/5/2016 CO #2	Final Contract Voucher Certification, Certificate of Completion, Final Estimate	Public Works

Amount Budgeted	$1,216,000.00	Account Number: WO# UP 3598
Expenditure Required	-0-	
Budget Remaining	$214,712.05	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
The general contractor, Allied Construction Associates, Inc., completed the Water Main "P" Replacement Project in accordance with the plans and specifications and to the satisfaction of the Public Works Department.

The amounts paid to the contractor under this contract are as follows:

- Contract total paid to date exclusive of tax: $916,930.35
- Washington State sales tax paid to date: $84,357.60
- Total $1,001,287.95
- The amount of retainage withheld: $45,852.54
- Amount currently paid to Contractor: $955,435.41

RECOMMENDATION (Exact action requested of Council):

Accept the Water Main "P" Replacement Project as complete and authorize the Mayor to sign the Certificate of Completion with Allied Construction Associates, Inc. allowing the release of held retention.

CITY OF EVERETT
FINAL CONTRACT VOUCHER CERTIFICATION

DATE: October 12, 2016
CONTRACTOR: Allied Construction Associates, Inc.
PROJECT TITLE: Water Main Replacement P
DATE WORK COMPLETE: July 27, 2017

ADDRESS: 3120 Hewitt Ave.
CITY/STATE: Everett, WA 98201
WORK ORDER NO. UP 3598
FINAL AMOUNT: $ 916,930.35
Exclusive of State Sales Tax

CONTRACTOR'S CERTIFICATION

I, the undersigned, having first been duly sworn, certify that the attached bill is a proper charge for work performed and material furnished to the City of Everett, that the same or any part thereof has not been paid, and that I am authorized to sign for the claimant; that I have not rented or purchased any equipment or materials from any employee of the City; I further certify that the attached final estimate is a true and correct statement showing all the monies due me from the City of Everett under this contract; that I have carefully examined said final estimate and understand the same and that I hereby release the City of Everett from any and all claims of whatsoever nature which I may have, arising out of the performance of said contract, which are not set forth in said estimate.

X _____ **CONTRACTOR**
Allied Construction Associates, Inc.

X _____ **TITLE**

Subscribed and sworn to before me this 13th day of October, 2016

X _____
Notary Public
in and for the State of Washington, residing at Skagit Co.

THOMAS J. CAMPBELL
COMMISSION EXPIRES
NOTARY
PUBLIC
JUNE 6, 2017
STATE OF WASHINGTON

PUBLIC WORKS DEPARTMENT CERTIFICATION

I Certify the attached final estimate to be based upon actual measurements and to be true and correct.

X _____
Construction Manager
Tom Fuchs

APPROVED Date: 10/19/16

X _____
Public Works Director
Dave Davis

INSTRUCTIONS

The Affidavit of Wages Paid must be prepared by the prime contractor, all subcontractors, and all subcontractor's agents and forwarded with the Final Contract Voucher Certification.

Contractor's Claims, if any, must be included and the Contractor's Certification must be labeled indicating a claim attached.

CERTIFICATE OF COMPLETION

Project: Water Main Replacement P

Contractor: Allied Construction Associates

Work Order No. UP 3598

The above mentioned project was constructed per the plans and specifications and to the satisfaction of the Public Works Department.

The Contractor physically completed the project, within the time allowed in the contract.

It is recommended that the City accept this project as complete.

Recommended by:

_____ 10/14/16
Public Works Director — Date
Dave Davis

Approved by:

_____ _____
Mayor, City of Everett — Date
Ray Stephanson

Attest: _____
City Clerk
Sharon Fuller

APPROVED AS TO FORM

_____

By: _____
Jim Iles, City Attorney

_____
Date

Run Date: 9/14/2016
Time: 9:25 AM
Project: 330
WATER MAIN REPLACEMENT "P"
WO 3598A BID: $230,330.00
TOTAL BID: $918,087.00

City of Everett - Public Works Department
Contract Estimate Voucher
For Work Order #3598A
Estimate #7

Cutoff Date: 8/26/2016

Contractor: ALLIED CONSTRUCTION
3120 HEWITT AVE
EVERETT WA 98201

	Total Amt	Previous Amt	Present Amt
Contract Totals to Date	$224,033.65	$222,393.12	$1,640.53
Retained Amounts	$11,201.70	$11,119.67	$82.03
State Tax Amounts	$20,611.10	$20,460.17	$150.93
Amounts Paid	$233,443.05	$231,733.62	
Amount to be Paid This Estimate			$1,709.43

Checked By Mike Kanuns **Date** 9-15-16
Recommended By Mike Kanuns **Date** 9/15/16
Public Works Director **Date** 9/16/16

Work Order Number: 3598A

FINAL

Run Date: 9/14/2016
Time: 9:25 AM

City of Everett - Public Works Department
Contract Estimate Voucher
For Work Order #3598A
Estimate #7

Cutoff Date: 8/26/2016

Project: 330
WATER MAIN REPLACEMENT "P"
WO 3598A BID: $230,330.00
TOTAL BID: $918,087.00

Contractor: ALLIED CONSTRUCTION
3120 HEWITT AVE
EVERETT WA 98201

Item #	Description	Units	Unit Price	Plan Quantity	Total Quantity	Previous Quantity	Present Quantity	Total Amount	Previous Amount	Present Amount
0001	Mobilization	LS	21,000.00	1.00	1.0000	1.0000	0.0000	21,000.00	21,000.00	0.00
0002	Surveying	LS	3,000.00	1.00	1.0000	1.0000	0.0000	3,000.00	3,000.00	0.00
0003	SPCC Plan	LS	500.00	1.00	1.0000	1.0000	0.0000	500.00	500.00	0.00
0004	Force Account	FA	1.00	16,000.00	8,383.7800	6,846.6200	1,537.1600	8,383.78	6,846.62	1,537.16
0005	Traffic Control Labor	HR	60.00	200.00	290.2500	290.2500	0.0000	17,415.00	17,415.00	0.00
0006	Maintain & Protect Traffic Control	LS	500.00	1.00	1.0000	1.0000	0.0000	500.00	500.00	0.00
0007	Trench Excavation Safety Systems	LS	100.00	1.00	1.0000	1.0000	0.0000	100.00	100.00	0.00
0008	Street Cleaning & Sweeping	HR	500.00	10.00	12.0000	12.0000	0.0000	6,000.00	6,000.00	0.00
0009	Erosion/Water Pollution Control	FA	1.00	4,000.00	591.0200	487.6500	103.3700	591.02	487.65	103.37
0010	Sawcut ACP, Final Joint Cut to 6-in.	LF	3.00	1,300.00	1,400.0000	1,400.0000	0.0000	4,200.00	4,200.00	0.00
0011	Sawcut ACP, Final Joint Cut Additional 1-in.	LF	0.75	1,000.00	1,075.0000	1,075.0000	0.0000	806.25	806.25	0.00
0012	Foundation Material, Class A or B	TN	30.00	70.00	9.5600	9.5600	0.0000	286.80	286.80	0.00
0013	Gravel Borrow	TN	22.00	350.00	365.5500	365.5500	0.0000	8,042.10	8,042.10	0.00
0014	Controlled Density Fill	CY	200.00	10.00	7.0000	7.0000	0.0000	1,400.00	1,400.00	0.00
0015	Temp. Pavement Patch	SY	75.00	30.00	16.5000	16.5000	0.0000	1,237.50	1,237.50	0.00
0016	Ductile Iron Pipe, 8-in	LF	50.00	960.00	956.0000	956.0000	0.0000	47,800.00	47,800.00	0.00
0017	Gate Valve, 8-in.	EA	1,200.00	1.00	1.0000	1.0000	0.0000	1,200.00	1,200.00	0.00
0018	Fire Hydrant Assembly	EA	3,500.00	2.00	3.0000	3.0000	0.0000	10,500.00	10,500.00	0.00
0019	Connect to Existing 8-in. Water Main	EA	3,000.00	1.00	1.0000	1.0000	0.0000	3,000.00	3,000.00	0.00
0020	Corporation Stop w/ Service Saddle, 3/4-in.	EA	400.00	19.00	20.0000	20.0000	0.0000	8,000.00	8,000.00	0.00
0021	Water Service PE, 3/4-in.	LF	14.00	220.00	267.0000	267.0000	0.0000	3,738.00	3,738.00	0.00
0022	Water Meter Box, 3/4-in.	EA	600.00	19.00	20.0000	20.0000	0.0000	12,000.00	12,000.00	0.00
0023	Air Vacuum Valve Assembly, 1-in.	EA	2,500.00	1.00	2.0000	2.0000	0.0000	5,000.00	5,000.00	0.00
0024	Crushed Surfacing Top Course	TN	40.00	130.00	118.7400	118.7400	0.0000	4,749.60	4,749.60	0.00
0025	HMA, CL 1/2" PG 64-22 Perm. Trench Patch	TN	160.00	130.00	159.7100	159.7100	0.0000	25,553.60	25,553.60	0.00
0026	HMA, CL 1/2" PG 64-22 Overlay	TN	200.00	80.00	100.0000	100.0000	0.0000	20,000.00	20,000.00	0.00
0027	Cement Monolithic Curb & Concrete Sidewalk	SY	110.00	50.00	47.0000	47.0000	0.0000	5,170.00	5,170.00	0.00

Run Date: 9/14/2016
Time: 9:25 AM

City of Everett - Public Works Department
Contract Estimate Voucher
For Work Order #3598A
Estimate #7

Cutoff Date: 8/26/2016

Project: 330
WATER MAIN REPLACEMENT "P"
WO 3598A BID: $230,330.00
TOTAL BID: $918,087.00

Contractor: ALLIED CONSTRUCTION
3120 HEWITT AVE
EVERETT WA 98201

Item #	Description	Units	Unit Price	Plan Quantity	Total Quantity	Previous Quantity	Present Quantity	Total Amount	Previous Amount	Present Amount
0028	Curb Ramp Type D	EA	2,000.00	1.00	1.0000	1.0000	0.0000	2,000.00	2,000.00	0.00
0029	Topsoil, Type A & Seeding	SY	10.00	160.00	186.0000	186.0000	0.0000	1,860.00	1,860.00	0.00
0030	Monument Cases	EA	250.00	1.00	0.0000	0.0000	0.0000	0.00	0.00	0.00
0031	Perm. Pavement Marking	LS	2,000.00	1.00	0.0000	0.0000	0.0000	0.00	0.00	0.00
							Work Order Totals:	224,033.65	222,393.12	1,640.53

Run Date: 9/14/2016
Time: 9:26 AM

Project: 330
WATER MAIN REPLACEMENT "P"
WO 3598B BID: $557,827.00
TOTAL BID: $918,087.00

City of Everett - Public Works Department
Contract Estimate Voucher
For Work Order #3598B
Estimate #7

Cutoff Date: 8/26/2016

Contractor: ALLIED CONSTRUCTION
3120 HEWITT AVE
EVERETT WA 98201

	Total Amt	Previous Amt	Present Amt
Contract Totals to Date	$584,954.07	$566,876.67	$18,077.40
Retained Amounts	$29,247.70	$28,343.84	$903.86
State Tax Amounts	$53,815.78	$52,152.66	$1,663.12
Amounts Paid	$609,522.15	$590,685.49	
Amount to be Paid This Estimate			$18,836.66

Checked By _____ **Date** 9-15-16
Recommended By Mike Kraus _____ **Date** 9/15/16
Public Works Director _____ **Date** 9/20/16

FINAL

Work Order Number: 3598B

Run Date: 9/14/2016
Time: 9:26 AM

City of Everett - Public Works Department
Contract Estimate Voucher
For Work Order #3598B
Estimate #7

Cutoff Date: 8/26/2016

Project: 330
WATER MAIN REPLACEMENT "P"
WO 3598B BID: $557,827.00
TOTAL BID: $918,087.00

Contractor: ALLIED CONSTRUCTION
3120 HEWITT AVE
EVERETT WA 98201

Item #	Description	Units	Unit Price	Plan Quantity	Total Quantity	Previous Quantity	Present Quantity	Total Amount	Previous Amount	Present Amount
0032	Mobilization	LS	52,000.00	1.00	1.0000	1.0000	0.0000	52,000.00	52,000.00	0.00
0033	Surveying	LS	4,000.00	1.00	1.0000	1.0000	0.0000	4,000.00	4,000.00	0.00
0034	SPCC Plan	LS	500.00	1.00	1.0000	1.0000	0.0000	500.00	500.00	0.00
0035	Force Account	FA	1.00	30,000.00	27,817.5700	19,740.1700	8,077.4000	27,817.57	19,740.17	8,077.40
0036	Traffic Control Labor	HR	60.00	600.00	886.0000	856.0000	30.0000	53,160.00	51,360.00	1,800.00
0037	Traffic Control - Off Duty Police Officer	FA	1.00	3,000.00	12,931.8800	12,931.8800	0.0000	12,931.88	12,931.88	0.00
0038	Maintance & Protect Traffic Control	LS	2,000.00	1.00	1.0000	1.0000	0.0000	2,000.00	2,000.00	0.00
0039	Trench Excavation Safety Systems	LS	100.00	1.00	1.0000	1.0000	0.0000	100.00	100.00	0.00
0040	Street Cleaning & Sweeping	HR	500.00	20.00	16.0000	4.0000	12.0000	8,000.00	2,000.00	6,000.00
0041	Erosion/Water Pollution Control	FA	1.00	2,000.00	480.3400	480.3400	0.0000	480.34	480.34	0.00
0042	Sawcut ACP, Final Joint Cut to 6-in.	LF	3.00	1,690.00	1,986.5000	1,986.5000	0.0000	5,959.50	5,959.50	0.00
0043	Sawcut CP, Final Joint cut to 6-in.	LF	7.00	1,690.00	465.0000	465.0000	0.0000	3,255.00	3,255.00	0.00
0044	Sawcut CP, Final Joint Cut Additional 1-in.	LF	1.30	1,690.00	8,910.0000	8,910.0000	0.0000	11,583.00	11,583.00	0.00
0045	Gravel Borrow	TN	22.00	440.00	741.0400	741.0400	0.0000	16,302.88	16,302.88	0.00
0046	Controlled Density Fill	CY	200.00	10.00	0.0000	0.0000	0.0000	0.00	0.00	0.00
0047	Temp. Pavement Patch	SY	75.00	520.00	573.3300	573.3300	0.0000	42,999.75	42,999.75	0.00
0048	Ductile Iron Pipe, 6-in.	LF	70.00	30.00	43.0000	43.0000	0.0000	3,010.00	3,010.00	0.00
0049	Ductile Iron Pipe, 8-in.	LF	100.00	150.00	108.0000	108.0000	0.0000	10,800.00	10,800.00	0.00
0050	Ductile Iron Pipe, 12-in.	LF	70.00	1,140.00	1,148.0000	1,148.0000	0.0000	80,360.00	80,360.00	0.00
0051	Gate Valve, 6-in.	EA	800.00	1.00	2.0000	2.0000	0.0000	1,600.00	1,600.00	0.00
0052	Gate Valve, 8-in.	EA	1,200.00	7.00	7.0000	7.0000	0.0000	8,400.00	8,400.00	0.00
0053	Gate Valve, 12-in.	EA	2,500.00	6.00	8.0000	8.0000	0.0000	20,000.00	20,000.00	0.00
0054	Fire Hydrant Assembly	EA	3,500.00	3.00	3.0000	3.0000	0.0000	10,500.00	10,500.00	0.00
0055	Connect to Existing 6-in. Water Main	EA	1,000.00	7.00	6.0000	6.0000	0.0000	6,000.00	6,000.00	0.00
0056	Connect to Existing 8-in. Water Main	EA	2,000.00	1.00	1.0000	1.0000	0.0000	2,000.00	2,000.00	0.00
0057	Connect to Existing 12-in. Water Main	EA	2,500.00	2.00	2.0000	2.0000	0.0000	5,000.00	5,000.00	0.00
0058	Corporation Stop w/Service Saddle, 3/4-in.	EA	400.00	2.00	3.0000	3.0000	0.0000	1,200.00	1,200.00	0.00

Run Date: 9/14/2016
Time: 9:26 AM

City of Everett - Public Works Department
Contract Estimate Voucher
For Work Order #3598B
Estimate #7

Cutoff Date: 8/26/2016

Project: 330
WATER MAIN REPLACEMENT "P"
WO 3598B BID: $557,827.00
TOTAL BID: $918,087.00

Contractor: ALLIED CONSTRUCTION
3120 HEWITT AVE
EVERETT WA 98201

Item #	Description	Units	Unit Price	Plan Quantity	Total Quantity	Previous Quantity	Present Quantity	Total Amount	Previous Amount	Present Amount
0059	Corportaiton Stop w/ Service Saddle, 1-in.	EA	500.00	1.00	1.0000	1.0000	0.0000	500.00	500.00	0.00
0060	Water Service Copper, 3/4-in.	LF	60.00	5.00	0.0000	0.0000	0.0000	0.00	0.00	0.00
0061	Water Service PE, 1-in.	LF	15.00	10.00	13.0000	13.0000	0.0000	195.00	195.00	0.00
0062	Air Vacuum Valve Assembly, 1-in.	EA	2,500.00	1.00	2.0000	2.0000	0.0000	5,000.00	5,000.00	0.00
0063	Water Fire Service, 6-in.	EA	1,000.00	1.00	1.0000	1.0000	0.0000	1,000.00	1,000.00	0.00
0064	CC Pavement Base III (HES) for Trench Patch	SY	85.00	520.00	448.7700	448.7700	0.0000	38,145.45	38,145.45	0.00
0065	Crushed Surfacing Top Course	TN	40.00	160.00	311.6100	311.6100	0.0000	12,464.40	12,464.40	0.00
0066	HMA, CL 1/2" PG 64-22 Perm. Trench Patch	TN	160.00	60.00	79.5600	79.5600	0.0000	12,729.60	12,729.60	0.00
0067	HMA, CL 1/2" PG 64-22 Overlay	TN	200.00	90.00	114.2800	114.2800	0.0000	22,856.00	22,856.00	0.00
0068	CC Monolithic Sidewalk Restoration	SY	110.00	500.00	541.6700	521.6700	20.0000	59,583.70	57,383.70	2,200.00
0069	Curb Ramp Type B	EA	2,000.00	6.00	7.0000	7.0000	0.0000	14,000.00	14,000.00	0.00
0070	Topsoil, Type A & Seeding	SY	10.00	170.00	41.0000	41.0000	0.0000	410.00	410.00	0.00
0071	Perm. Pavement Marking	LS	10,000.00	1.00	0.0000	0.0000	0.0000	0.00	0.00	0.00
0072	Vehicle Loop Detectors	LF	30.00	300.00	937.0000	937.0000	0.0000	28,110.00	28,110.00	0.00
							Work Order Totals:	584,954.07	566,876.67	18,077.40

Run Date: 9/14/2016
Time: 9:26 AM

Project: 330
WATER MAIN REPLACEMENT "P"
WO 3598C BID: $129,930.00
TOTAL BID: $918,087.00

City of Everett - Public Works Department
Contract Estimate Voucher
For Work Order #3598C
Estimate #7

Cutoff Date: 8/26/2016

Contractor: ALLIED CONSTRUCTION
3120 HEWITT AVE
EVERETT WA 98201

	Total Amt	Previous Amt	Present Amt
Contract Totals to Date	$107,942.63	$107,821.63	$121.00
Retained Amounts	$5,397.14	$5,391.09	$6.05
State Tax Amounts	$9,930.72	$9,919.59	$11.13
Amounts Paid	$112,476.21	$112,350.13	
Amount to be Paid This Estimate			$126.08

Checked By _____ **Date** 9-15-16
Recommended By _____ **Date** 9-15-16
Public Works Director _____ **Date** 9/15/16

Work Order Number: 3598C

FINAL

Run Date: 9/14/2016
Time: 9:26 AM

City of Everett - Public Works Department
Contract Estimate Voucher
For Work Order #3598C
Estimate #7

Cutoff Date: 8/26/2016

Project: 330
WATER MAIN REPLACEMENT "P"
WO 3598C BID: $129,930.00
TOTAL BID: $918,087.00

Contractor: ALLIED CONSTRUCTION
3120 HEWITT AVE
EVERETT WA 98201

Item #	Description	Units	Unit Price	Plan Quantity	Total Quantity	Previous Quantity	Present Quantity	Total Amount	Previous Amount	Present Amount
0073	Surveying	LS	12,000.00	1.00	1.0000	1.0000	0.0000	12,000.00	12,000.00	0.00
0074	Mobilization	LS	2,000.00	1.00	1.0000	1.0000	0.0000	2,000.00	2,000.00	0.00
0075	SPCC Plan	LS	500.00	1.00	1.0000	1.0000	0.0000	500.00	500.00	0.00
0076	Force Account	FA	1.00	8,000.00	8,500.5300	8,379.5300	121.0000	8,500.53	8,379.53	121.00
0077	Traffic Control Labor	HR	60.00	60.00	0.0000	0.0000	0.0000	0.00	0.00	0.00
0078	Maint & Protect Traffic Control	LS	500.00	1.00	1.0000	1.0000	0.0000	500.00	500.00	0.00
0079	Trench Excavation Safety Systems	LS	100.00	1.00	1.0000	1.0000	0.0000	100.00	100.00	0.00
0080	Street Cleaning & Sweeping	HR	500.00	15.00	0.0000	0.0000	0.0000	0.00	0.00	0.00
0081	Erosion/Water Pollution Control	FA	1.00	4,000.00	0.0000	0.0000	0.0000	0.00	0.00	0.00
0082	Foundation Material, Class A or B	TN	30.00	100.00	0.0000	0.0000	0.0000	0.00	0.00	0.00
0083	Gravel Borrow	TN	22.00	90.00	125.5500	125.5500	0.0000	2,762.10	2,762.10	0.00
0084	Controlled Density Fill	CY	200.00	10.00	0.0000	0.0000	0.0000	0.00	0.00	0.00
0085	Ductile Iron Pipe, 8-in.	LF	60.00	280.00	223.0000	223.0000	0.0000	13,380.00	13,380.00	0.00
0086	Gate Valve, 8-in.	EA	1,200.00	1.00	1.0000	1.0000	0.0000	1,200.00	1,200.00	0.00
0087	Bore/Jack 24" Steel Casing	LF	700.00	64.00	70.0000	70.0000	0.0000	49,000.00	49,000.00	0.00
0088	Connect to Existing 8-in. Water Main	EA	2,000.00	1.00	1.0000	1.0000	0.0000	2,000.00	2,000.00	0.00
0089	Connect to Existing 12-in. Water Main	EA	6,000.00	1.00	1.0000	1.0000	0.0000	6,000.00	6,000.00	0.00
0090	Monument Cases	EA	250.00	1.00	0.0000	0.0000	0.0000	0.00	0.00	0.00
0091	Topsoil, Type A and Seeding	SY	10.00	370.00	0.0000	0.0000	0.0000	0.00	0.00	0.00
0092	PRV Vault	LS	10,000.00	1.00	1.0000	1.0000	0.0000	10,000.00	10,000.00	0.00
0093	Material on Hand	LS	18,391.32	1.00	0.0000	0.0000	0.0000	0.00	0.00	0.00
							Work Order Totals:	107,942.63	107,821.63	121.00

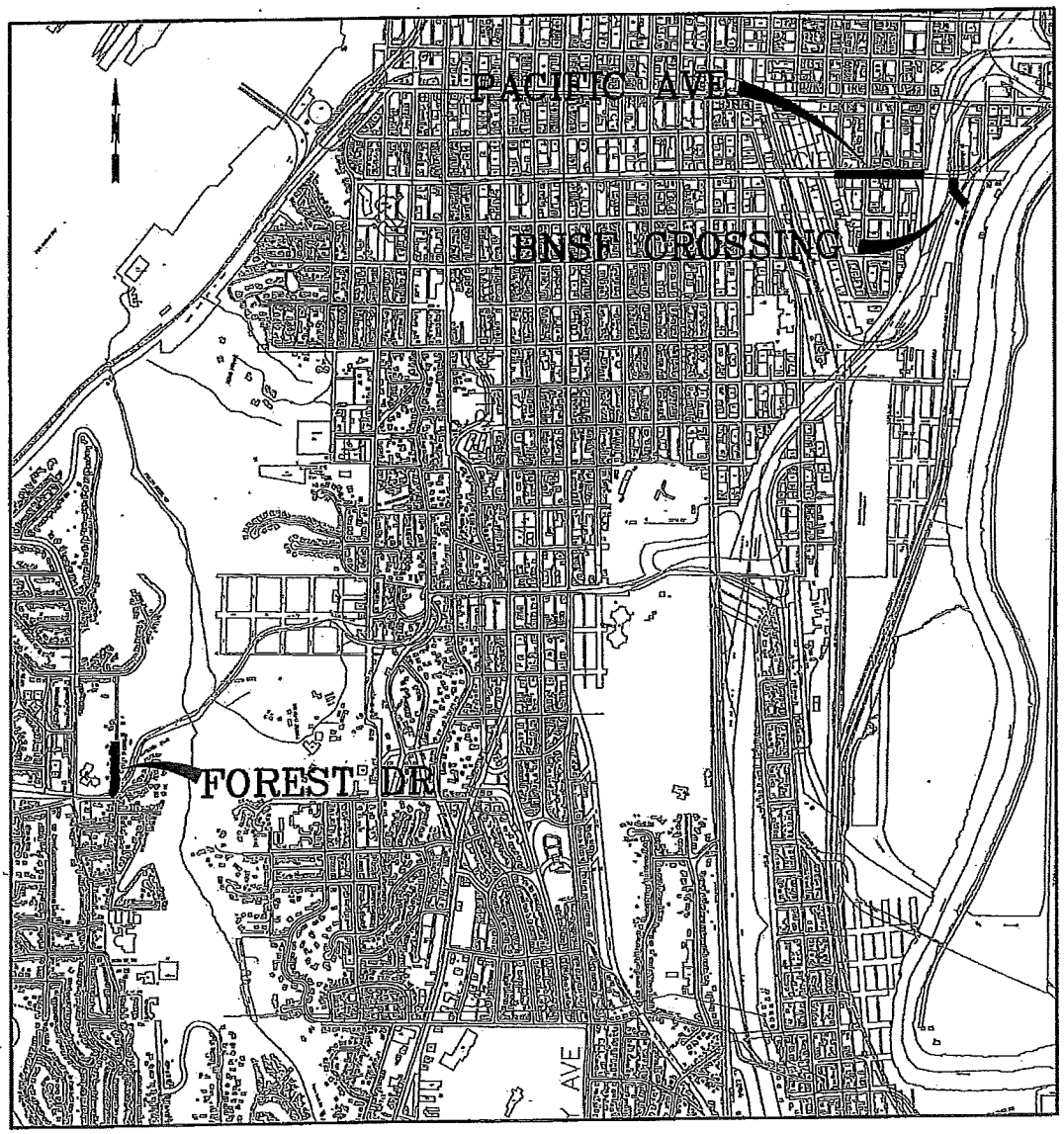
TY OF EVERE
BLIC WORKS DEPARTME

WATER MAIN REPLACEMENT "P

CTION

CONSTRUCTION WO UP3598

VOLUME 2 – DRAWINGS



VICINITY MAP

CITY OFFICI

MAYOR:

RAY STEPHAN

COUNCIL MEM

COUNCIL PRESI
SCOTT BADE

PAUL ROBERTS

JEFF MOORE

SCOTT MURPHY

RECOMMENDED FOR

PROJECT ENGINEER
RICHARD HEFTI, P.E.

MAINTENANCE SUPERINTENDENT
MARK SADLER, P.E.

APPROVED

ENGINEERING SUPERINTENDENT
JAMES W. MILLER, P.E.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
A Resolution finding a substantial need for using the 101% limit factor under Chapter 84.55 RCW with regard to the levying of regular property taxes and emergency medical services property taxes, and authorizing the same to be used to fund the City General Fund and the Emergency Medical Services Fund

	Briefing	COUNCIL BILL #	
	Proposed Action	Originating Department	Finance
	Consent	Contact Person	Susy Haugen
11/2/16	Action	Phone Number	425-257-8612
	First Reading	FOR AGENDA OF	11/2/16
	Second Reading		
	Third Reading		
	Public Hearing		
	Budget Advisory		

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
	Council Briefing 10/5/16, Public Hearing 10/19/16	Resolution	Finance

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

DETAILED SUMMARY STATEMENT:

RCW 84.55.0101 and 84.55.120 require that the legislative authority of a taxing district adopt a separate resolution or ordinance finding a substantial need to use the 101% limit factor in setting property taxes. This resolution fulfills the RCW requirements to use the 101% limit factor to levy 2017 property taxes. For the resolution to be approved, a minimum of a majority plus one of the Council must vote in support of the resolution. A public hearing regarding the 2017 Property Tax levy and the intent to use the 101% limit factor was held on October 19, 2016.

RECOMMENDATION: Adopt A Resolution finding a substantial need for using the 101% limit factor under Chapter 84.55 RCW with regard to the levying of regular property taxes and emergency medical services property taxes, and authorizing the same to be used to fund the City General Fund and the Emergency Medical Services Fund.

RESOLUTION NO._____

A RESOLUTION of the City Council of the City of Everett, Washington, finding a substantial need for using the 101% limit factor under Chapter 84.55 RCW with regard to the levying of regular property taxes and emergency medical services property taxes, and authorizing same to be used to fund the City General Fund and the Emergency Medical Services Fund

WHEREAS, the City Council of the City of Everett is considering its budget for the calendar year 2014; and

WHEREAS, the City Council, in the course of considering the budget for 2014, considers all sources of revenue and examines all anticipated expenses and obligations; and

WHEREAS, RCW 84.55.0101 (Chapter 3, § 204; Referendum 47, § 204) requires that the Everett City Council make a finding of "substantial need" to set an increase of 101 percent in the regular property tax levy; and

WHEREAS, increases in demands upon the resources of the City in the coming year require additional resources to provide services in the areas of fire prevention and suppression, law and justice, emergency medical, transportation, road repair and maintenance, parks and recreation, safe and clean neighborhoods, and to fulfill unfunded state and federal mandates;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVERETT THAT:

Section 1. The City Council of the City of Everett reviews the sources of funds for necessary City programs and services.

Section 2. The City Council finds there is a substantial need for using the 101 percent limit factor under Chapter 84.55 RCW in setting the regular property tax levy. The elements of the substantial need identified by the Everett City Council include, but are not limited to, providing for the public health and safety as described in the 2014 Preliminary Budget. The finding of substantial need is further defined as including such increases in demands upon resources of the City in the coming year to provide services in the areas of fire prevention and suppression, law and justice, emergency medical, transportation, road repair and maintenance, parks and recreation, safe and clean neighborhoods, and the need to fulfill unfunded state and federal mandates.

Section 3. This finding of substantial need includes both the City General Fund and the Emergency Medical Services Fund as described in Section 2.

Section 4. This finding of substantial need to use the limit factor of 101 percent as permitted by Chapter 84.55 RCW is made by a minimum of a majority plus one vote of the Everett City Council as required by RCW 84.55.101 and is embodied in this separate resolution as required by RCW 84.55.120.

Section 5. Based on this finding of substantial need, the increase in the regular property tax levy for the General Fund for the calendar year 2014 shall be 1%, which is 101 percent of the highest amount of regular property taxes that could have been lawfully levied in this taxing district in any year since 2001. The dollar increase to the regular property tax levy resulting from applying the 101 percent limit factor is $332,986.

Section 6. That the City Clerk be, and hereby is, directed to certify to the County Assessor a copy of the resolution in order that the same be extended upon the general assessment rolls of said County, in the same manner and at the same time as the levy for the State and County taxes is extended.

Section 7. That said taxes shall be collected and paid to the City Treasurer at the same time and in the same manner as provided by the laws of the State of Washington relating to collection of taxes in cities of the first class.

Adopted at a regular meeting the City Council of the City of Everett, Washington, this __th day of October, 2013, by a minimum of a majority plus one vote of the entire Council.

_____

Council member Introducing Resolution

Passed and Approved this __th day of October, 2013

_____

Council President

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	Department(s) Approval
		Ordinance	

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:
Collective bargaining agreement for 2017 between City of Everett and Everett Police Management Association

_____	Briefing	COUNCIL BILL #	_____
_____	Proposed Action	Originating Department	Labor Relations/ Human Resources
_____	Consent	Contact Person	Sharon DeHaan
x	Action	Phone Number	425-257-8685
_____	First Reading	FOR AGENDA OF	November 2, 2016
_____	Second Reading		
_____	Third Reading		
_____	Public Hearing		
_____	Budget Advisory		

Initialed by:
Department Head _____
CAA db
Council President SM

Location	Preceding Action	Attachments	Department(s) Approval
		Collective bargaining agreement	Labor Relations/ Human Resources Administration

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

DETAILED SUMMARY STATEMENT:

The content of the collective bargaining agreement for 2017 between the City of Everett and Everett Police Management Association was approved by membership vote. The document is available for review in the City Clerk's Office.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the collective bargaining agreement with Everett Police Management Association for January 1, 2017 through December 31, 2017.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Washington State Patrol ACCESS User Acknowledgement

	Briefing
	Proposed Action
	Consent
11/2/16	Action
	First Reading
	Second Reading
	Third Reading
	Public Hearing
	Budget Advisory

COUNCIL BILL #	
Originating Department	Legal
Contact Person	Leslie Tidball
Phone Number	425 257 8512
FOR AGENDA OF	

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
		ACCESS User Agreement	Legal, IT

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

DETAILED SUMMARY STATEMENT:
Certified City of Everett Prosecutor employees are required to access Criminal Justice Information Services (CJIS) provided by the Washington State Patrol. The City of Everett Prosecutors Office must abide by certain rules in order to maintain the highest levels of security of this information. The Washington State Patrol requires all agencies with access to CJIS information to sign an ACCESS User Acknowledgement.

RECOMMENDATION (Exact action requested of Council): Authorize the Mayor or his designee to sign the Washington State Patrol ACCESS User Acknowledgement agreement.

2016-17

WASHINGTON STATE PATROL
ACCESS USER ACKNOWLEDGMENT

I. Introduction

Since its inception, the National Crime Information Center (NCIC) has operated under a shared management concept between the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Division and state users. The NCIC Advisory Policy Board established a single state agency in each state to assume responsibility as the NCIC CJIS Systems Agency (CSA) for all agencies within the state. The CSA is responsible for the planning of necessary hardware, software, funding, security, auditing, and training of all authorized agencies within the state for complete access to FBI CJIS systems data services. The Washington State Patrol (WSP) Criminal Records Division (CRD) Administrator is designated as the NCIC CJIS Systems Officer (CSO). The FBI CJIS Division requires the CSO to manage the following:

1. Operational, technical, and investigative assistance to NCIC users
2. Telecommunications lines to a state interface
3. Legal and legislative review of matters pertaining to NCIC
4. Timely distribution of information related to all aspects of NCIC system usage by means of the ACCESS Operations Manual, NCIC Operating Manual, CJIS Security Policy, Technical and Operational Updates, and related documents
5. Training and training materials to all participating agencies
6. System security to include physical security, personnel, and all technical aspects of security as required in the CJIS Security Policy

The following documents are incorporated by reference and made part of this user acknowledgment:

1. ACCESS Operations Manual
2. CJIS Security Policy
3. U.S. Code of Federal Regulations, Title 28, Part 20
4. Applicable federal and state laws and regulations; ACCESS/WACIC rules, regulations, and policies as recommended by the ACCESS Section

II. Primary Connection and Originating Agency Identifier (ORI) Issuance

All agencies that inquire on or enter data into ACCESS must have a primary connection to ACCESS and a signed WSP ACCESS User Acknowledgment on file prior to adding secondary connections such as regional management systems. Agencies must ensure that all system use through both the primary or secondary connections remain in compliance with ACCESS and FBI CJIS rules.

The CSO will coordinate the assignment of new ORI numbers, the change in ORI location or address, and any other changes, cancellations, or retirements of ORIs accessing WACIC/NCIC. The assignment of an ORI to an agency is not a guarantee of access to the state and federal systems. The CSA makes the final determination of who may access WACIC/NCIC based on the standards provided by the CJIS Security Policy and determination of an agency's administration of criminal justice. Any requests for additional ORIs by an agency will be forwarded to the WSP ACCESS Section Manager, who will

conduct a short audit of the agency to verify compliance standards are being met. See ACCESS Operations Manual Introduction for more information.

III. Indemnification

Each agency(party) shall defend, protect, and hold harmless the other agency(party) from and against all claims, suits and/or actions arising from any negligent or intentional act or omission of that party's employees, agents, and/or authorized subcontractor(s) while performing under this agreement.

IV. Administrative Responsibilities

The agency shall respond to requests for information by the FBI CJIS Division or ACCESS in the form of questionnaires, surveys, or similar methods, to the maximum extent possible, consistent with any fiscal, time, or personnel constraints of that agency.

All agencies are required to have formalized written procedures for the following, if applicable: validations, hit confirmation, criminal history use and dissemination, ACCESS misuse, record entry (for all record types entered into WACIC and NCIC), rebackground investigations, password management, disposal of media, physical protection and documenting, updating the system network.

The CSO provides system training to agencies accessing WACIC/NCIC through the state computer system. If employees are using inquiry only functions, they must attend Level 1 certification training. Employees entering information into the WACIC/NCIC system must attend Level 2 certification training. All certifications must be aquired within six months of hire date and renewed biennially. All staff who manage ACCESS users and are not ACCESS certified must view the Upper Management and Administrators Overview Training online and sign the signature log, which must be kept at the agency for review during the triennial ACCESS audit.

Security awareness training is required within six months of initial assignment, and biennially thereafter, for all personnel (who are not ACCESS certified) that have unescorted access to CJI. This includes agency employees, custodial staff, IT staff, upper management, etc. Records of individual basic security awareness training shall be documented, kept current, and maintained by each agency for review during the triennial ACCESS or Technical Security audit.

A Terminal Agency Coordinator (TAC) must be assigned for each terminal agency. This person is the Point Of Contact (POC) for the agency. A TAC must maintain a Level 2 ACCESS certification. The TAC retains the responsibility of ensuring his/her agency is in compliance with state and FBI CJIS Division policies and regulations. A TAC must attend TAC training once during the triennial audit cycle.

For those agencies providing ACCESS services through regional computer systems to outside agencies, the TAC shall be responsible for the dissemination of all administrative messages received on the 24 hour printer to those agencies.

The CSO provides the criminal justice community with the current ACCESS Operations Manual, NCIC Operating Manual, NCIC Code Manual, and CJIS Security Policy. Manual updates are provided on a quarterly basis. The agency shall incorporate such changes upon receipt. Information is provided via email and can be found on the ACCESS website at the following link:

http://www.wsp.wa.gov/_secured/access/access.htm

V. Criminal History Record Information (CHRI) Responsibilities

Each agency shall conform to system policies, as established by the FBI CJIS Division and ACCESS, before access to CHRI is permitted. This will allow for control over the data and give assurance of system security.

1. The rules and procedures governing terminal access to CHRI shall apply equally to all participants in the system.
2. All criminal justice agencies with ACCESS terminals and access to computerized CHRI data from the system shall permit an FBI CJIS Division and an ACCESS audit team to conduct appropriate audits. Agencies must cooperate with these audits and respond promptly.
3. All terminals interfaced directly with the ACCESS/WACIC/NCIC systems for the exchange of CHRI must be under the management control of a criminal justice agency, as defined by the CJIS Security Policy.
4. All agencies must ensure they provide all required information when running criminal history checks. WSP retains access to all agency criminal history logs through the ACCESS System. Secondary dissemination of criminal history must be logged by the agency.

VI. Record Entry Responsibilities

Record Quality

Criminal justice agencies have a specific duty to maintain records that are accurate, complete, and current. ACCESS recommends agencies conduct self audits as a means of verifying the completeness and accuracy of the information in the system. These self assessments should be on a continual basis to ensure both quality assurance and compliance with standards. Errors discovered in NCIC records are classified as serious errors, form errors, or an error trend.

Serious errors: FBI CJIS will cancel the record and notify the entering agency via administrative message. The message provides the entire canceled record and a detailed explanation of the reason for cancellation.

Form errors or error trends: The CSA notifies the ORI by letter of the corrective action to be taken. No further notification or action will be taken by the CSA, unless the CSA deems it appropriate.

Timeliness

WACIC/NCIC records must be entered promptly to ensure maximum system effectiveness. Records must be entered according to standards defined in the ACCESS Operations Manual.

Accuracy and Completeness

The accuracy of WACIC/NCIC data must be double checked and documented, including the initials and date by a second party. The verification should include assuring the data in the WACIC/NCIC record matches the data in the investigative report and that other checks were made. Agencies lacking support staff for second party checks should require the case officer to check the record.

Complete records of any kind include all information available on the person or property at the time of entry. ACCESS recommends "packing the record" for all entries. Complete inquiries on persons include numbers that could be indexed in the record (i.e. Social Security Number (SSN), Vehicle Identification Number (VIN), Drivers License Number (OLN), etc.). Inquiries should be made on all names/aliases used by the suspect. Complete vehicle inquiries include VIN and license plate numbers.

Record Validations

NCIC/WACIC validation listing are prepared pursuant to a schedule, as published in the ACCESS Operations Manual. These listings are distributed to the originating agency via File Transfer Protocol (FTP).

Validation requires the originating agency to confirm the record is complete, accurate, and active. Validation is accomplished by reviewing the original entry and current supporting documents, and correspondence with any appropriate complainant, victim, prosecutor, court, motor vehicle registry files, or other appropriate source or individual. Validation efforts must be well documented. Validation efforts include what was done to complete the validation of the individual record. Documentation of phone calls, letters, dates and dispositions need to be included with each record that was validated. Many agencies document this information in the case file. In the event the agency is unsuccessful in its attempts to contact the victim, complainant, etc., the entering agency must make a determination based on the best information and knowledge available whether or not to retain the original entry in the file.

The agency must sign the validation certificate and fax, mail, or email a copy to the ACCESS Section each month certifying the records were validated. If the CSA has not received a validation certificate response from an agency within the specified period of time, the CSA will purge all records which are the subject of that agency's validation listings from NCIC and WACIC.

VII. Security Responsibilities

Technical Roles and Responsibilities

All agencies participating in ACCESS must comply with and enforce system security. Each interface agency (city, county, or other agency) having access to a criminal justice network must have someone designated as the technical security POC. A criminal justice network is a telecommunications infrastructure dedicated to the use by criminal justice entities exchanging criminal justice information. The technical security POC's shall be responsible for the following:

1. Identifying the user of the hardware/software and ensuring that no unauthorized users have access to the same
2. Identifying and documenting how the equipment is connected to the state system
3. Ensuring that personnel security screening procedures are being followed as stated in the CJIS Security Policy
4. Ensuring that appropriate hardware security measures are in place
5. Supporting policy compliance and keeping the WSP Information Security Officer (ISO) informed of security incidents

Security Enforcement

Each interface agency is responsible for enforcing system security standards for their agency, in addition to all of the other agencies and entities to which the interface agency provides CJIS and Washington State Department of Licensing (DOL) records information. Authorized users shall access CJIS and DOL systems and disseminate the data only for the purpose for which they are authorized. Each criminal justice and non-criminal justice agency authorized to access FBI CJIS systems and DOL shall have a written policy for the discipline of policy violators.

Physical Security

A physically secure location is a facility or an area, a room, or a group of rooms within a facility with both the physical and personnel security controls sufficient to protect CJI and associated information systems. The physically secure location is subject to criminal justice agency management control.

The perimeter of a physically secure location shall be prominently posted and separated from non-secure locations by physical controls.

All personnel with access to computer centers, terminal areas, and/or areas where CJIS information is housed shall either be escorted by authorized personnel at all times or receive a fingerprint-based background check and view security awareness training.

Personnel Security

To verify identification, a state of residency and national fingerprint-based record checks shall be conducted within 30 days of initial employment or assignment for all personnel who have authorized access to FBI CJIS systems and those who have direct responsibility to configure and maintain computer systems and networks with access to FBI CJIS systems. All requests for system access shall be made as specified by the CSO. The CSO or their official designee is authorized to approve CJIS systems access. All official designees to the CSO shall be from an authorized criminal justice agency.

Support personnel, contractors, and custodial workers who access computer terminal areas shall be subject to a state of residency and national fingerprint-based record check and view the security awareness training, unless these individuals are escorted by authorized personnel at all times. Authorized personnel are those persons who have passed a state and national fingerprint-based record check and have been granted access.

Private Contractors/Vendors

Private contractors shall be permitted access to CJIS record information systems pursuant to an agreement which specifically identifies the contractor's purpose and scope of providing services for the administration of criminal justice. The agreement between the criminal justice government agency and the private contractor shall incorporate the CJIS Security Addendum approved by the Director of the FBI. Private contractors who perform the administration of criminal justice shall meet the same training and certification criteria required by governmental agencies performing a similar function, and shall be subject to the same extent of audit review as are local user agencies.

Hit Confirmation

Any agency that enters a record into NCIC/WACIC has the duty to promptly respond with the necessary confirmation of the hit and other details. They must furnish a response within a specific time period. Valid hit confirmation is based on two levels of priority: urgent or routine.

Priority 1: Urgent

The hit must be confirmed within ten minutes. In those instances where the hit is the only basis for detaining a suspect or the nature of a case requires urgent confirmation of a hit, priority 1 should be specified.

Priority 2: Routine

The hit must be confirmed within one hour. Generally, this priority will be used when the person is being held on local charges, property has been located under circumstances where immediate action is not necessary, or an urgent confirmation is not required.

VIII. Compliance Audits

The FBI CJIS Division requires triennial audits be conducted by the CSA to review CJIS standards of compliance and provide recommendations for best business practices. WSP audit staff provide three types of reviews:

1. **Agency Compliance Review:** WSP Auditors conduct an administrative interview with the TAC. The interview includes questions to determine adherence to WACIC/NCIC policy requirements including:

    a. TAC responsibilities
    b. ACCESS certification, rebackground of ACCESS users and other trainings
    c. System security
    d. Media protection
    e. Criminal history
    f. National Instant Criminal background Check System (NICS)
    g. Random sample of missing persons in WACIC/NCIC
    h. Random sample of warrants in WACIC/NCIC
    i. Random sample of protection orders in WACIC/NCIC
    j. Random sample of stolen vehicles in WACIC/NCIC
    k. Record maintenance
    l. Hit confirmation
    m. ORI usage and administration of criminal justice functions
    n. Written procedures
    o. Validations
    p. Site security visits to ensure terminal locations are secure

2. **Data Quality Review:** WSP Auditors conduct an on-site data quality review. Auditors compare WACIC/NCIC records against agency case files. Auditors check for accuracy, completeness, and verify entry and removal practices. The auditors document records with errors for the agency to update.

3. **Auditor Recommendations for Best Practices:** WSP Auditors provide a compliance report of information received during the interview and data quality review. They provide recommendations for best business practices.

IX. Technical Security Audits

The agency is responsible for compliance to technical standards set forth by ACCESS and the CJIS Security Policy. Technical security audits will follow the WACIC/NCIC triennial audit schedule.

1. **Agency Compliance Review:** The WSP ISO performs security audits addressing the following compliance areas:

   a. Personnel security measures
   b. Security incident response
   c. Configuration management control
   d. Encryption
   e. Media protection (physical and electronic)
   f. Physical protection
   g. Session lock capabilites
   h. System and communications protection and information integrity
   i. Boundary protection
   j. Malicious code protection
   k. Event logging capability
   l. System use notification
   m. Patch management
   n. Identification and authentication
   o. Wireless devices – mobile / bluetooth / cellular
   p. Partitioning and virtualization
   q. Cloud computing

WSP ACCESS USER ACKNOWLEDGMENT

As an agency head/director, I hereby acknowledge the duties and responsibilities as set forth in this ACCESS User Acknowledgement, as well as those documents incorporated by reference. I acknowledge that these duties and responsibilities have been developed to ensure the reliability, confidentiality, completeness, and accuracy of all records contained in or obtained by means of the WACIC/NCIC system. I also acknowledge that a failure to comply with these duties and responsibilities will subject my agency to various sanctions. These sanctions may include the termination of ACCESS/WACIC/NCIC services to my agency.

I further understand DOL may review activities of any person who receives vehicle, vessel, and firearm record information to ensure compliance with limitations imposed on the use of the information. The DOL shall suspend or revoke for up to five years the privilege of obtaining information of a person found to be in violation of chapter 42.56 RCW, chapter 46.12 RCW, or the user agreement with DOL. I understand misuse of this information is a gross misdemeanor and is punishable by a fine not to exceed $10,000 or by imprisonment in a county jail not to exceed one year, or both such fine and imprisonment for each violation. RCW 46.12.640.

Agency Name:	City of Everett Prosecutor's Office	
ORI:	WA031031A	
Agency Head Name (printed):		
Agency Head Email:		
Agency Head Telephone Number:		
Agency Head Signature		Date:

Please return a copy of this signature page to the WSP ACCESS Section.

24x7 Hit Confirmation Agreement

Must be completed by agencies who:

A. Provide 24/7 teletype printer coverage for another agency.
B. Receive 24/7 teletype printer coverage from another agency.

Every terminal agency that enters records destined for NCIC/WACIC must ensure hit confirmation is available for all records, except III, 24 hours per day either at the agency or through a written agreement with another agency at its location. The terminal agency printer must be monitored 24 hours per day. In the event that 24 hour per day hit confirmation coverage is not available, the terminal agency printer must be capable of being forwarded to a 24 hour a day facility. A 24 hour telephone number of the agency responsible for confirming hits must be placed in the Miscellaneous Field of every entry.

Parties who enter into this agreement must adhere to the response times and regulations set forth in the ACCESS Operations Manual and the CJIS Security Policy. This interagency agreement must be current and approved by the CJIS Systems Agency (CSA), the Washington State Patrol (WSP) before agencies adopt the policies and procedures set forth by the agreement.

Termination of Agreement

This agreement shall remain in effect unless terminated by either agency upon thirty (30) days written notice. The agency terminating the agreement must also formally notify the WSP ACCESS Section within the thirty (30) days. Termination of this agreement requires the agency printer to be forwarded to another 24 hour per day facility.

I hereby acknowledge the responsibility and duty to perform teletype hit confirmation to the terminal agency 24 hours per day within the requirements defined by NCIC/WACIC and the CJIS Security Policy.

Agency Providing 24/7 Coverage:		
ORI:		
Agency Head Name (printed):		
Agency Head Signature:		Date:

Agency Receiving 24/7 Coverage:		
ORI:		
Agency Head Name (printed):		
Agency Head Signature:		Date:

Holder of the Record Agreement

Must be completed by agencies who:

A. Use their ORI to enter another agency's records.
B. Have their records entered under another agency's ORI.

A Holder of the Record Agreement (HORA) is required when an agency uses their ORI to enter another agency's records, thus becoming the holder of the record. The holder of the record is defined as an agency that is using their ORI to enter another agency's records. The owner of a record is defined as the agency where the record originated.

The purpose of this agreement is to establish responsibility for records entered in WACIC/NCIC by the holder of record under its NCIC assigned ORI on behalf of the owner of record. As they relate to records entered for the owner of record, the holder of record assumes the following responsibilities: data entry; documentation; cancellation and modification of entries; timeliness of entries, cancellations and modifications; hit confirmation; second party checks; and validation of entries. The owner of the record is also responsible for providing the HORA with information for entry in a timely manner.

The holder of record must adhere to the regulations set forth in the ACCESS Operations Manual and the CJIS Security Policy. This interagency agreement must be current and approved by the CJIS Systems Agency (CSA), the Washington State Patrol (WSP) before agencies adopt the policies and procedures set forth by the agreement.

Entries provided under the HORA (check all that apply):

☐ All entries	☐ Articles	☐ Boats	☐ Gangs
☐ Guns	☐ Identity Theft	☐ Images	☐ License Plates
☐ Missing Persons	☐ Person of Interest	☐ Protection Orders	☐ Securities
☐ Supervised Persons	☐ Unidentified Persons	☐ Vehicles	☐ Vehicle/Boat Parts
☐ Wanted Persons	☐ Violent Persons		

Termination of Agreement

This agreement shall remain in effect unless terminated by either agency upon thirty (30) days written notice. The agency terminating the agreement must also formally notify the WSP ACCESS Section within the thirty (30) days. Termination of this Agreement shall not negate the obligation of either party to maintain records entered under this agreement to ensure their accuracy and timeliness.

Agency Acting as the Holder of the Record:		
ORI:		
Agency Head Name (printed):		
Agency Head Signature:		Date:

Agency Acting as the Owner of the Record:		
ORI:		
Agency Head Name (printed):		
Agency Head Signature:		Date:

Inter-agency Agreement

Must be completed by agencies who:

A. Provide criminal justice services to another agency.
B. Receive criminal justice services from another agency.

An inter-agency agreement describing the criminal justice services provided and/or received by an agency must be in place.

Agency Providing Service: SNOPAC 9.1.1

Agency Receiving Service: City of Everett Prosecutor's Office

Services Provided (check all that apply):

- [ ] Hit confirmation
- [ ] Dispatch
- [ ] Record entry
- [ ] Record validations
- [ ] Gun transfers/Concealed Pistol Licenses (CPLs)
- [x] Use of regional management system
- [x] Terminal connection to ACCESS
- [x] Other services (describe):

Parties who enter into this agreement must adhere to the regulations set forth in the ACCESS Operations Manual and the CJIS Security Policy. This interagency agreement must be current and approved by the CJIS Systems Agency (CSA), the Washington State Patrol (WSP) before agencies adopt the policies and procedures set forth by the agreement.

Termination of Agreement

This agreement shall remain in effect unless terminated by either agency upon thirty (30) days written notice. The agency terminating the agreement must also formally notify the WSP ACCESS Section within the thirty (30) days.

Agency Providing Criminal Justice Service(s):		
ORI:		
Agency Head Name (printed):		
Agency Head Signature:		Date:

Agency Receiving Criminal Justice Service(s):	City of Everett Prosecutor's Office	
ORI:	WA031031A	
Agency Head Name (printed):		
Agency Head Signature:		Date:

Management Control Agreement
Must be completed by agencies who:

A. **Have a city or county Information Technology (IT) department handling IT services for the criminal justice agency.**

Pursuant to the CJIS Security Policy, it is agreed that with respect to administration of that portion of computer systems and network infrastructure interfacing directly or indirectly with A Central Computerized Enforcement Service System (ACCESS) for the interstate exchange of criminal history/criminal justice information, the Criminal Justice Agency shall have the authority, via managed control, to set and enforce:

(1) Priorities.
(2) Standards for the selection, supervision, and elimination of access to personnel who may be tasked with working on or interfacing with any of the telecommunication systems or criminal justice systems/computers enumerated in paragraph three below.
(3) Policy governing operation of justice systems, computers, access devices, circuits, hubs, routers, firewalls, and any other components, including encryption, that comprise and support a telecommunications network and related criminal justice systems to include but not limited to criminal history record/criminal justice information, insofar as the equipment is used to process or transmit criminal justice systems information guaranteeing the priority, integrity, and availability of service needed by the criminal justice community.
(4) Restriction of unauthorized personnel from access or use of equipment accessing the State network.
(5) Compliance with all rules and regulations of the Criminal Justice Agency Policies and CJIS Security Policy in the operation of all information received.

Responsibility for management of security control shall remain with the criminal justice agency, as required by the CJIS Security Policy.

This agreement covers the overall supervision of all Criminal Justice Agency systems, applications, equipment, systems design, programming, and operational procedures associated with the development, implementation, and maintenance of any Criminal Justice Agency system to include NCIC Programs that may be subsequently designed and/or implemented within the Criminal Justice Agency.

Agency Providing IT Service(s):	City of Everett IT Department	
Agency Head Name (printed):		
Agency Head Signature:		Date:

Criminal Justice Agency Receiving IT Service(s):	City of Everett Prosecutor's Office	
ORI:	WA031031A	
Agency Head Name (printed):		
Agency Head Signature:		Date:

Information Exchange Agreement
Must be completed by agencies who:

A. Provide criminal justice information to contracted prosecutors.

An information exchange agreement describing the Criminal Justice Information (CJI) provided and/or received by an agency must be in place between the agency providing the information and the contracted prosecutor receiving the information.

1. Security Control: Each person receiving the information will maintain the information in a physically secure location and only authorized individuals will have access to the CJI. The information will not be left in the open for unauthorized individuals to view.
2. Misuse: Each person receiving the information will use the information for criminal justice purposes only. The information received is *not* to be used in any civil cases or disseminated to non criminal justice personnel.
3. Training: Each person receiving the information will be responsible to view the Basic Security Awareness Training once every two years. The training log will be provided by and maintained at the criminal justice agency providing the CJI for review at the audit.
4. Destruction: CJI shall be securely disposed of when no longer required and destroyed by shredding or incineration.

Services Provided (check all that apply):

☐ Criminal History ☐ Other CJI (describe):

_____

_____

Parties who enter into this agreement must adhere to the regulations set forth in the ACCESS/NCIC Operating Manuals and the CJIS Security Policy. This Information Exchange Agreement must be current and approved by the CJIS Systems Agency (CSA), the Washington State Patrol (WSP) before agencies adopt the policies and procedures set forth by the agreement.

Termination of Agreement
This agreement shall remain in effect unless terminated by either party upon thirty (30) days written notice.

Agency Providing Criminal Justice Information:		
ORI:		
Agency Head Name (printed):		
Agency Head Signature:		Date:

Contracted Prosecutor Receiving Criminal Justice Information:		
Contractor Name (printed):		
Contractor Signature:		Date:

City Named in the Contract		
Authorizing Name (printed):		
Authorizing Signature:		Date:

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
ATACRAIDS Addendum for SNOPAC Agencies

_____	Briefing	COUNCIL BILL #	
_____	Proposed Action	Originating Depart.	Police
_____	Consent	Contact Person	Capt. Greg Lineberry
_____	Action	Phone Number	425-257-8557
_____	First Reading	FOR AGENDA OF	November 2, 2016
_____	Second Reading		
_____	Third Reading		
_____	Public Hearing		
_____	Budget Advisory	Initialed by:	
		Department Head	
		CAA	db
		Council President	SM

Location	Preceding Action	Attachments	Department(s) Approval
		Addendum	Police, Legal

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

DETAILED SUMMARY STATEMENT:

The Everett Police Department, through its affiliation with SNOPAC 911 Emergency Communications, is in the final stages of implementing new web-based crime mapping and analysis software provided by LexisNexis Risk Solutions. While SNOPAC has already executed a services agreement with LexisNexis on behalf of member agencies, LexisNexis is requiring the attached Addendum be signed by each member agency as an acknowledgement that the use of its product is subject to the agency providing public safety data to be incorporated into their Public Safety Data Exchange Database.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the ATACRAIDS Addendum for SNOPAC Agencies at no cost to the City.

ATACRAIDS Addendum for SNOPAC Agencies

This Addendum sets forth additional or amended terms and conditions for the use of ATACRAIDS (the "LN Services" provided herein), which are in addition to, and without limitation of, the terms and conditions set forth in the LexisNexis Master Terms and Conditions (form LNMTC) – Government between SNOPAC and LexisNexis Risk Solutions FL Inc. or its affiliated entity ("LN") for the LN Services (such services agreement, the "Agreement"). As the SNOPAC agency signing below ("Customer"), your use of ATACRAIDS is subject to the Agreement attached hereto as Attachment I, and this Addendum. Further, if you access the ATAC Workstation software, use of that service will be subject to the terms of the ATAC Workstation End User License Agreement attached hereto as Attachment II. Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Agreement.

I. Government Case Data Exchange Database

1. LN maintains the LexisNexis® Public Safety Data Exchange Database ("PSDEX"), which contains information related to public safety and state and local law enforcement investigations. PSDEX is compiled from information submitted by PSDEX customers and enhanced by LN data and technology.
2. In exchange for good and valuable consideration, including access to PSDEX, Customer hereby agrees to contribute public safety information that may be used for analysis, investigations and reporting. (the "Customer Data Contribution").
3. LN's obligations.
   a. LN agrees to provide PSDEX information to Customer.
   b. LN agrees to provide Customer with instructions for submitting information to the PSDEX database and for using the PSDEX service.
   c. LN agrees and Customer acknowledges that it will not make available to Customer the source(s) of the PSDEX reports submitted by other PSDEX customers except as required by law or a court of competent jurisdiction and except when such LN customer provides information regarding potential fraud committed by its own employees/agents.
4. Customer obligations.
   a. Customer agrees to submit to LN, with reasonable promptness and consistency, Customer Data Contributions.
   b. Customer acknowledges and agrees that it is solely responsible for the content of the Customer Data Contributions submitted to LN and that it shall use reasonable care to ensure the information submitted is a reasonable reflection of the actual report. Each submission to LN with respect to an incident or subject constitutes a Customer Data Contribution.
   c. Customer's disclosure of information to LN is and will be in compliance with all applicable laws, regulations and rulings.
   d. Customer agrees to notify LN promptly of any change in status, factual background, circumstances or errors concerning any Customer Data Contribution previously provided to LN. Customer further agrees to submit corrected information in a timely manner. Customer agrees that it will fully and promptly cooperate with LN should any inquiry about the Customer Data Contributions arise.
   e. The following named individual/department shall serve as the contact person(s) for submissions made to LN. The contact person shall respond to requests from LN for clarification or updates on incident reports submitted by Customer during normal business hours, and Customer will not reasonably withhold from LN information on any such submission. LN shall not reveal the identity of the Customer's contact person(s) to any other PSDEX customer.

Name:	Greg Lineberry
Title:	Captain
Address:	3002 Wetmore
	Everett, WA 98201
Phone:	425-257-8557
Fax:	425-257-6501
Email:	glineberry@everettwa.gov

   f. Customer agrees that it will access information contributed to PSDEX by other customers only through LN.

g. Customer agrees that LN and all other PSDEX customers shall not be liable to Customer, and Customer hereby releases LN and all other PSDEX customers from liability to Customer, for any claims, damages, liabilities, losses and injuries arising out of, or caused in whole or in part by LN or each such other PSDEX customer's negligence, gross negligence, willful misconduct and other acts and omissions in reporting or updating incidents of alleged wrongdoing for inclusion in PSDEX. Other PSDEX customers are intended to be third party beneficiaries of this paragraph.

II. General Terms

1. **LICENSE GRANT**. Customer, at no charge, hereby grants to LN a paid up, irrevocable, worldwide, non-exclusive license to use, adapt, compile, aggregate, create derivative works, transfer, transmit, publish and distribute to PSDEX customers the Customer Data Contributions for use in PSDEX and all successor databases and/or information services provided by LN.
2. **GOOGLE GEOCODER**. LN used Google Geocoder to geocode address locations that do not already contain "X" and "Y" coordinates. Any "X" and "Y" coordinate information provided by the Customer is assumed by LN to be accurate and will not be geocoded by Google Geocoder. Crime dot locations geocoded by Google Geocoder as displayed in PSDEX are approximate due to automated location methods and address inconsistencies.
3. **DATA DISCLAIMER**. LN is not responsible for the loss of any data or the accuracy of the data, or for any errors or omissions in the LN Services or the use of the LN Services or data therein by any third party, including the public or any law enforcement or governmental agencies.
4. **LINKS TO THIRD PARTY SITES.** PSDEX may contain links or produce search results that reference links to third party websites ("Linked Sites"). LN has no control over these Linked Sites or the content within them. LN cannot and does not guarantee, represent, or warrant that the content contained in the Linked Sites, including, without limitation other links, is accurate, legal, and/or inoffensive. LN does not endorse the content of any Linked Site, nor does it warrant that a Linked Site will not contain computer viruses or other harmful code. By using PSDEX to search for or link to Linked Sites, Customer agrees and understands that such use is entirely at its own risk, and that Customer may not make any claim against LN for any damages or losses whatsoever resulting from such use.
5. **OWNERSHIP OF SUBMITTED CONTENT**. All information provided by a PSDEX customer is offered and owned by that customer. Unless otherwise indicated by such customer, all data will be retained by LN and remain accessible by the general public and/or other PSDEX customers in accordance with the provisions of this Addendum.

AUTHORIZATION AND ACCEPTANCE

I HEREBY CERTIFY that I am authorized to execute this Addendum on behalf of Customer.

Required: Customer ORI number (Originating Agency Identifier): WA0310300

CUSTOMER: Everett Police Department

Signature: _____

Print: _____

Title: _____

Date: _____

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

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

_____	Briefing	COUNCIL BILL #	
_____	Proposed Action	Originating Department	Public Works
_____	Consent	Contact Person	Ryan Sass
_____	Action	Phone Number	(425) 257-8942
_____	First Reading	FOR AGENDA OF	October 26, 2016
_____	Second Reading		
_____	Third Reading		
_____	Public Hearing		
_____	Budget Advisory	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,

(l) 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 4.1 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

Status Log

Previous Status	New Status	Change Date	Change By	Context Details
No items available				

Indirect Expense

Type N/A

Rate 0%

Base $0

Period From

Period To

Amount Charged $0

Federal Share $0

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			$8,108,240
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): 69-08-0001

ACH FORMAT: ☑ CCD+ ☐ CTX ☐ CTP

ADDRESS:
1200 New Jersey Avenue S.E., East Building, Fifth Floor (E-54)

Washington, DC 20590

CONTACT PERSON NAME: Millie Fields

TELEPHONE NUMBER: (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:
Note: Contact name will be verified with the FTA Project Lead

TELEPHONE NUMBER: ( )

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.*

30. Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*

31. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*

32. National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 *et seq.*

33. Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, Sept. 26, 2006.

34. Davis-Bacon Act, as amended, 40 U.S.C. § 3141 *et seq.*

35. Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103 *et seq.*,

36. DOT regulations, "Organization and Delegation of Powers and Duties," 49 CFR part 1.

37. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," former 49 CFR part 18.

38. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," former 49 CFR part 19.

39. DOT regulations, "New Restrictions on Lobbying," 49 CFR part 20.

40. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR part 21.

41. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs," 49 CFR part 24.

42. DOT regulations "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25.

43. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR part 26.

44. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 27.

45. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 49 CFR part 1200.

46. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR part 32 and "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR part 32.

47. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR part 37.

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.

55. Joint Federal Highway Administration/FTA regulations, "Planning Assistance and Standards," 23 CFR part 450 and 49 CFR part 613.

56. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR part 1194.

57. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 CFR part 90.

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.

60. Office of Management and Budget Circular A-21, "Cost Principles for Educational Institutions"), former 2 CFR part 220.

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.

81. FTA Circular 5300.1, "State of Good Repair Grant Program: Guidance and Application Instructions," January 28, 2015, and superseded by a later edition, if published.

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.**

86.

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:
Lease Agreement with Workforce Development Council Snohomish County for space at Everett Station

	Briefing	COUNCIL BILL #	
	Proposed Action	Originating Dept.	Real Property
	Consent	Contact Person	Mike Palacios
11/2/16	Action	Phone Number	425-257-8938
	First Reading	FOR AGENDA OF	November 2, 2016
	Second Reading		
	Third Reading	Initialed by:	
	Public Hearing	Department Head	
	Budget Advisory	CAA	
		Council President	

Location	Preceding Action	Attachments	Department(s) Approval
Everett Station 3201 Smith Avenue	06/26/02 5-year Lease Agreement 02/11/09 3-year Lease Agreement 05/26/10 5-year Lease Agreement 04/29/15 5-year Lease Agreement	Lease Agreement	Transit, Legal, Real Property

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

DETAILED SUMMARY STATEMENT:
Workforce Development Council Snohomish County – Workforce Snohomish (WFS) is in year two of an existing 5-year lease agreement for space on the third and fourth floors at Everett Station located at 3201 Smith Avenue for the Washington State Employment Security Department. A recent audit finding of the lease by WFS's Certified Public Accounting firm of Clark Nuber determined that any existing escalated leases would need to be changed to straightline payment leases in order to comply with generally accepted accounting principles. The existing lease between the City of Everett and WFS has 3% escalations for years three through five.

The proposed lease would replace the existing lease having the same termination date of April 30, 2020. The rental rate has been changed to a fixed straightline monthly rate of $31,192.93. This fixed monthly rate reflects and includes the escalations for years three through five applied over the remaining 43 month term of the lease.

RECOMMENDATION:
Authorize the Mayor to sign a Lease Agreement with Workforce Development Council Snohomish County for space at Everett Station.

Date: October 1, 2016

LEASE

THIS LEASE is made and entered into between City of Everett, a municipal corporation whose address is 2930 Wetmore Avenue, Suite 10-A, Everett, Washington 98201, for its heirs, executors, administrators, successors, and assigns, hereinafter called the Lessor, and WORKFORCE DEVELOPMENT COUNCIL SNOHOMISH COUNTY, hereinafter called the Lessee.

WHEREAS, Lessor and Lessee desire to replace the existing lease dated March 27, 2015, and modify the Rental Rate and Premises for the period from October 1, 2016, through April 30, 2020, by this new lease agreement.

WHEREAS, Lessor and Lessee deem it to be in the best public interest to enter into this Lease.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED AS FOLLOWS:

LEASED PREMISES

1. The Lessor hereby leases to the Lessee the following described premises:

Tax Parcel Number: 4390744013008

Common Street Address: 3201 Smith Avenue, Everett, Washington 98201

Approximately **15,481** square feet of office space on the third and fourth floors of a four-story building, in the building commonly known as "Everett Station" (hereinafter referred to as the ' Building") and as generally shown hachured on the attached 3rd and 4th Floor Plan at Everett Station drawing. The legal description for the building is:

That portion of Blocks 744 and 759 in the Everett Land Company's First Addition to the City of Everett. According to the plat thereof recorded in Volume 3 of Plats, Page 20, vacated 32"" Street and the east half of the northwest quarter of Section 29, Township 29 North, Range 5 East W.M. in Snohomish County, Washington, described as follows:

Beginning at the southwest corner of Lot 3, said Block 759: thence northwesterly along the northeasterly right-or-way line of Smith Avenue, according to the recorded plat thereof, in Volume 3 of Plats, Page 20, to the northwest comer of Lot 13, said Block 744; thence northeasterly along the northwest line of said Lot 13 and the northeasterly extension of said line to the point of intersection with a line drawn parallel with, and distant 40.0 feet southwesterly of Burlington Northern Railroad Company's Main Track centerline, as now located and constructed: extension of the southeasterly line of said Lot 3, Block 759; thence southwesterly along said southeasterly line to the point of beginning.

USE

2. The premises shall be used by Lessee for the following purpose(s): office space. ("Permitted Use") and for no other purpose without the prior written consent of Lessor, which consent shall not be unreasonably withheld, Lessor's withholding of consent shall be deemed reasonable if Lessor determines that any proposed use is either (i) inconsistent with the maintenance and operation of the Building, or (ii) inconsistent with the conditions, covenants, restrictions and any reasonable Rules and Regulations to be established applicable to the Building. No act shall be

done in or about the Premises that is unlawful. Lessee shall not commit any act that will increase the then existing rate of insurance (primary or excess) on the Building without Lessor's consent. Lessee shall promptly pay upon demand the amount of the increase in insurance caused by such act or acts done by Lessee. Lessee shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance or other act which disturbs the quiet enjoyment of any other tenant in the Building. Without the written consent of Lessor, Lessee shall not use any apparatus, machinery or device in or about the Premises that will cause any substantial noise, vibration or fumes. Lessee shall comply with all laws relating to its use or occupancy, of the Premises and shall observe such reasonable rules and regulations (not inconsistent with the terms of this Lease) as may be adopted and made available to Lessee by Lessor from time to time for the safety, care and cleanliness of the Premises or the Building, and for the preservation of good order therein.

TERM

3. TO HAVE AND TO HOLD the premises with their appurtenances beginning on October 1st, 2016, and terminating at midnight on April 30th, 2020, unless terminated earlier as provided for under Section 8, RENEWAL/CANCELLATION, section below.

RENTAL RATE

4. $1,341,295.90 total amount to be paid over entire lease term period payable in monthly payment amounts of $31,192.93. Effective straight line rental rate is $24.18/SF for the term of this lease.

Payments shall be made at the end of each month upon submission of properly executed vouchers.

EXPENSES

5. During the term of this Lease, Lessor shall pay all applicable real estate taxes, all property assessments, insurance, storm water, water, sewer, garbage collection, and maintenance and repair as described below, together with natural gas, electricity, elevator service, exterior and interior window washing, landscape and irrigation water, and janitor service. Janitorial service includes exterior and interior window washing, restroom supplies and light bulb replacement.

5.1 Lessee's "all-in" RENTAL RATE per Section 4 above includes all costs for: electricity, janitorial service and supplies and restroom supplies to the Premises.

MAINTENANCE AND REPAIR

6. The Lessor shall maintain the premises in good repair and tenantable condition during the continuance of this Lease, except in case of damage arising from the negligence of the Lessee's clients, agents or employees. For the purposes of maintaining and repairing the premises, the Lessor reserves the right at reasonable times to enter and inspect the premises and to make any necessary repairs to the building. Lessor's maintenance and repair obligation shall include, but not be limited to, the mechanical, electrical, interior lighting (including replacement of ballasts, starters and fluorescent tubes as required), plumbing, heating, ventilating and air-conditioning systems (including replacement of filters as recommended in equipment service manual); floor coverings; window coverings; elevators (including communications systems); inside and outside walls (including windows and entrance and exit doors); all structural portions of the building (including the roof and the watertight integrity of same); porches, stairways; sidewalks; exterior lighting; parking lot (including snow removal, cleaning and restriping as required); wheel bumpers; drainage; landscaping and continuous satisfaction of all governmental requirements generally applicable to similar office buildings in the area (example: fire, building, energy codes, indoor air quality and requirements to provide architecturally barrier-free premises for persons with disabilities, etc.).

6.1 Nothing in this Lease shall be construed or interpreted to impose any obligation on Lessor to maintain or repair Lessee's Trade Fixtures, personal property or furnishings. No damages, compensation or claim shall be payable by Lessor for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises or the Building.

6.2. Lessor shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of such services beyond Lessor's reasonable control to make any repairs or perform any maintenance, unless due to Lessor's negligence. No temporary interruption or failure such services incident to the making of repairs. alterations, or improvements, or due to accident strike or conditions or events beyond Lessor's reasonable control or charges in or reduction of such services shall be deemed an eviction of Lessee or relieve Lessee from any of Lessee's obligations hereunder.

ASSIGNMENT/SUBLEASE

7. The Lessee may assign this Lease or sublet the premises with the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Lessee shall not permit the use of the premises by anyone other than the Lessee, such assignee or sublessee, and the employees, agents and servants of the Lessee, assignee, or sublessee.

RENEWAL/CANCELLATION

8. This lease agreement may be renewed for three additional one (1) year terms at Lessee's option and subject to Lessor's approval. Lessee shall provide written notice to Lessor at least sixty (60) days prior to the effective date of termination of the existing term in effect of Lessee's desire to renew. Except for the rental rate which shall be negotiated for each additional term, all other terms of this Lease shall remain in full force and effect.

8.1 In the event Lessee should experience a reduction of its Federal funding or is otherwise unable to obtain legislative appropriation to support continued leasing of the premises, Lessee may terminate this Lease upon sixty (60) days written notice to Lessor.

~~8.2 It is provided, however, that if a university chooses to lease space in Everett Station, there is expressly reserved to the Lessor the right and option to terminate this Lease, by giving written notice to the Lessee at least nine (9) months prior to the effective date of such termination.~~

9. Intentionally Omitted.

PAYMENT

10. Any and all payments provided for herein when made to the Lessor by the Lessee shall release the Lessee from any obligation therefore to any other party or assignee of Lessor.

COMPLIANCE WITH STATE/FEDERAL LAWS

11. Lessor is responsible for complying with all applicable provisions of the Americans With Disabilities Act of 1990 (42 U.S.c. 12101- 12213) and the Washington State Law Against Discrimination, Chapter 49.60 RCW, as well as the regulations adopted thereunder, with respect to the Leased Premises.

FIXTURES

12. The Lessee, ~~upon the written authorization of the Department of General Administration~~, shall have the right during the existence of this Lease with the written permission of the Lessor (such permission shall not be unreasonably withheld), to make alterations, attach fixtures, and erect additions, structures or signs, in or upon the premises hereby leased. ~~Such alterations, fixtures, additions, structures and signs shall be authorized only by the Department of General Administration.~~ Performance of any of the rights authorized above shall be conducted in compliance with all applicable governmental regulations, building codes, including obtaining any necessary permits. Any fixtures, additions, or structures so placed in or upon or attached to the premises shall be and remain the property of the Lessee and may be removed there from by the Lessee upon the termination of this Lease. Any damage caused by the removal of any of the above items shall be repaired by the Lessee.

ALTERATIONS/IMPROVEMENTS

13. In the event the Lessee requires alterations/improvements during the term of this Lease, any renewals and/or modifications thereof, the Lessor shall have the right to provide such services. If required by state law, the Lessor shall pay prevailing rate of wage to all workers, laborers or mechanics employed to perform such work as well as comply with the rules and regulations of the Department of Labor & Industries. If the Lessee considers Lessor's proposed costs for alterations/ improvements excessive, Lessee shall have the right, but not the obligation, to request and receive at least two independent bids; and the Lessee shall have the right at its option to select one alternative contractor whom the Lessor shall allow to provide such services for the Lessee in compliance with the Lessor's building standards and operation procedures.

PREVAILING WAGE

14. Lessor agrees to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this Lease when required by state law to do so, and to comply with the provisions of Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries and the schedule of prevailing wage rates for the locality or localities where this Lease will be performed as determined by the Industrial Statistician of the Department of Labor and Industries, are by reference made a part of this Lease as though fully set forth herein.

DISASTER

15. In the event the leased premises are destroyed or injured by fire, earthquake or other casualty so as to render the premises unfit for occupancy, and the Lessor(s) neglects and/or refuses to restore said premises to their former condition, then the Lessee may terminate this Lease and shall be reimbursed for any unearned rent that has been paid. In the event said premises are partially destroyed by any of the aforesaid means, the rent herein agreed to be paid shall be abated from the time of occurrence of such destruction or injury until the premises are again restored to their former condition, and any rent paid by the Lessee during the period of abatement shall be credited upon the next installment(s) of rent to be paid. It is understood that the terms "abated" and "abatement" mean a pro rata reduction of area unsuitable for occupancy due to casualty loss in relation to the total rented area. Except as otherwise expressly provided by this Lease. Lessor shall not be liable to Lessee for any damages, including, but not limited to consequential damages, for all events, actions, or inaction that are beyond Lessor's reasonable control, including but not limited to, interruption or loss of business due to acts of war or terrorism, strikes or labor unrest, weather, disaster, catastrophe, flood or earthquake.

NO GUARANTEES

16. It is understood that no guarantees, express or implied, representations, promises or statements have been made by the Lessee unless endorsed herein in writing. And it is further understood that this Lease shall not be valid and binding, unless same has been approved by the CEO of Workforce Development Council Snohomish County or his or her designee. Any amendment or modification of this Lease must be in writing and signed by both parties.

LEGAL RELATIONS

17. Each party to this Lease shall be responsible for injury to persons or damage to property resulting from negligence on the part of itself, its employees, its agents, or its officers. Each party to this Lease (Indemnifying Party) shall indemnify and defend the other party to this Lease from and against all claims asserted by persons not parties to this Lease, arising from or relating to the Indemnifying Parties breach of this Lease, negligence, intentional misconduct, or violation of law. Neither party assumes any responsibility to the other party for the consequences of any act or omission of any third party.

~~ENERGY~~

~~18. The Lessor, or authorized representative, in accordance with RCW 43.19.685, has conducted a walk-through survey of the leased premises with a representative of the Director of the Department of General Administration. Lessor will undertake technical assistance studies and/or subsequent acquisition and installation of energy conservation measures identified as cost effective by the survey.~~

REIMBURSEMENT FOR DAMAGE TO PREMISES

19. The Lessee hereby agrees to reimburse the Lessor for damages caused by the negligence of its employees, clients and agents, but in no event shall this paragraph be construed as diminishing the Lessor's duty to make repairs as set forth in preceding paragraphs of this Lease, or as making Lessee responsible for the repair of normal wear and tear.

HAZARDOUS SUBSTANCES

20. Lessor warrants to his/her knowledge that no hazardous substance, toxic waste, or other toxic substance has been produced, disposed of, or is or has been kept on the premises hereby leased which if found on the property would subject the owner or user to any damages, penalty, or liability under an applicable local, state or federal law or regulation. Lessee acknowledges that Lessor encountered some contaminated soils during construction of the Building as referenced in the State of Washington's Department of Ecology letter to the City dated April 20, 1998. Lessor represents that it remedied such contaminated soils as required by existing law. Lessor shall indemnify and hold harmless the Lessee with respect to any and all damages, costs, attorneys' fees, and penalties arising from the presence of any hazardous or toxic substances on the Premises, except for such substances as may be placed on the Premises by the Lessee.

Lessee shall not keep upon or about the Premises for use, disposal, treatment, generation, storage, demonstration or sale any substances that are hazardous, toxic harmful or dangerous, and/or which are subject to regulation as hazardous or toxic, dangerous, or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance (collectively referred to as "hazardous substances"). Lessee shall be responsible for any and all damages, costs, fees (including attorney's fees and costs), civil and criminal penalties, or clean-up costs assessed against or imposed as a result of Lessee's use, disposal, generation, storage, demonstration or sale of hazardous substances or that of Lessee's employees, agents or invitees. Breach of this provision shall entitle Lessor to terminate this Lease.

ADDITIONAL LEASE PROVISIONS

21. It is agreed that the Lessee has inspected the premises and accepts the premises "as-is" and that Lessor is not required to make any changes to the premises that is the subject of this Lease.

~~CANCELLATION/SUPERSESSION~~

~~22. This Lease cancels, supersedes, and replaces SRL 01-0132 dated October 18, 2002, and all modifications thereto effective January 1, 2009.~~

WITHHOLDING OF RENT PAYMENTS

23. If the Lessor fails to maintain the premises the Lessee may withhold ten percent (10%) of rent payments until such time as Lessor completes deficient maintenance, repair and/or improvements that may be required. Lessee shall provide Lessor with a list of deficient maintenance, repair and/or improvement items and notify Lessor that Lessee will withhold rent payment until deficient maintenance, repair and/or improvements have been completed. Lessee shall place all withheld rent payments in an interest bearing account. Withheld rent payments plus accrued interest will be remitted to Lessor after ~~the Department of General Administration~~ Lessee has verified that Lessor has satisfactorily completed all maintenance, repair and/or improvements. Nothing in this provision shall limit other remedies which may be available to Lessee under this Lease.

CONDEMNATION

24. Entire Taking

If all of the Premises, or such portions of the Premises or of the Building as may be required for the reasonable use of the Premises, are taken by eminent domain or under threat of eminent domain, this Lease shall automatically terminate as of the date title vests in the condemning authority and all Rent, Additional Rent and other payments shall be paid to that date.

24.1. Constructive Taking of Entire Premises

In the event of a taking of a material part of, but less than all of the Building, where Lessor shall reasonably determine that the remaining portions of the Building cannot be economically and effectively used by it (whether on account of physical, economic, aesthetic or other reasons). Lessor shall forward a written notice to Lessee of such determination not more than thirty (30) days after the date of taking. The term of this Lease shall expire upon such date, as Lessor shall specify in such notice but not earlier than thirty (30) days after the date of such notice.

24.2. Partial Taking

In case of taking of a part of the Premises, or a portion of the Building not required for the reasonable use of the Premises, then this Lease shall continue in full force and effect and the Rent shall be equitably reduced based on the proportion, if any, by which the floor area of the Premises is reduced, such Rent reduction to be effective as of the date title to such portion vests in the condemning authority,

24.3. Termination by Lessor

In the event that title to a part of tile Building other than the Premises shall be so condemned or taken and if, in tile opinion of the Lessor, the Building should be restored in such a way as to alter the Premises materially, the Lessor may terminate this Lease and the term and estate hereby granted by notifying the Lessee of such termination within sixty (60) days following the date of vesting of title, and this Lease and the term and estate hereby granted shall expire on the date specified in the notice of termination, not less than sixty (60) days after the giving of such notice, as fully and completely as if such date were the date set for the expiration of the term of this Lease, and the Rent hereunder shall be apportioned as of such date.

24.4. Awards and Damages

Lessor reserves all rights to damages to the Premises for any partial, constructive, or entire taking by eminent domain, and Lessee hereby assigns to Lessor any right Lessee may have to such damages or award, and Lessee shall make no claim against Lessor or the condemning authority for damages for termination of the leasehold interest. Lessee shall have the right, however, to claim and recover from the condemning authority compensation for any loss to which Lessee may be put for Lessee's moving expenses, business interruption or taking of Lessee's personal property (not including Lessee's leasehold interest), provided that such damages may be claimed only if they are awarded separately in the eminent domain proceedings and not out of or as part of the damages recoverable by Lessor.

ADVERTISING & SIGNS

25. Lessor must approve any signs in the common and public areas in advance in writing. Without Lessor's prior written consent, Lessee shall not inscribe or post, place, or in any manner display any sign, graphics, notice, picture, placard, or poster, or any advertising matter whatsoever, anywhere in or about the Premises or the Building at places visible (either directly or indirectly as an outline or shadow on a glass pane) from anywhere outside the Premises without first obtaining the Lessor s written consent thereto, which consent shall not be unreasonably withheld, provided such signs are consistent in size with the structure and consistent with the architectural and aesthetic aspects or tile Building. Any such consent by Lessor shall be upon the understanding and condition that Lessee shall remove the same at the expiration or sooner termination of this Lease, and Lessee shall repair any damage to the Premises or the Building caused thereby.

LIENS

26. Lessee shall keep the Premises free from any liens arising out of any work performed and materials ordered or obligations incurred by or on behalf of Lessee or its members.

SURRENDER OF POSSESSION

27. Lessee shall promptly and peacefully surrender the premises to Lessor upon expiration or sooner termination of this Lease in as good condition as when received by Lessee from Lessor or as thereafter improved, reasonable use and wear and tear excepted.

NON-WAIVER

28. Waiver by Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant, or condition. Acceptance of Rent hereunder by Lessor subsequent to any breach shall not be a waiver of any preceding breach by Lessee, other than the failure of Lessee to pay the particular Rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such Rent.

DEFAULT

29. Default by Lessee. In the event of any breach of any provision of this Lease by Lessee, the breach shall be deemed a default entitling Lessor to the remedies set forth in 29.1., after Lessor has delivered to Lessee notice of the alleged breach and a demand that the same be remedied immediately; provided that, if the breach pertains to a matter other than the payment of rent, Lessee shall not be in default after receipt of the notice if Lessee shall promptly commence to cure the default and shall cure the default within twenty (20) days after receipt of the notice, or if the breach pertains to the payment or rent Lessee shall have seven (7) days after receipt of the notice to cure the breach; provided, however, if such default is non-monetary in nature and is not reasonably susceptible of being cured in said twenty (20) days, Lessee shall commence to cure such default within said period and diligently pursue such action with continuity to completion. If a breach has been cured within the grace periods permitted by this section it shall no longer constitute a default.

29.1. Lessor's Remedies. In the event of a material default, Lessor shall be entitled to terminate this Lease and to re-enter and take possession of the property. All rights and remedies of Lessor shall be cumulative, and none shall exclude any other right or remedy allowed by law.

REMOVAL OF PROPERTY

30. Regardless of any other provisions in this Lease, Lessee shall remove all of its trade fixtures, fixtures, and personal property without damage to the Premises at the expiration or sooner termination of this Lease and shall pay Lessor any damages to the Premises or building resulting from such removal. If Lessee fails to remove any of its moveable property, trade fixtures, or fixtures upon expiration or sooner termination of this Lease, it shall become the property of the Lessor.

MONTH TO MONTH TENANCY

31. If Lessee remains in possession of the premises after the expiration or termination of the Lease term, or any extension thereof, such possession by Lessee shall be deemed to be a month-to-month tenancy, terminable as provided by law. During such month-to-month tenancy, Lessee shall pay all rent provided in this Lease or such other rent as the parties mutually agree in writing and all provisions of this Lease shall apply to the month-to-month tenancy, except those pertaining to term and option to extend.

SUBORDINATION

32. So long as Lessor has fully performed under the terms of this Lease, Lessee agrees to execute, within ten (10) days of written request by Lessor, the state's standard Tenant Estoppel and Subordination Agreements.

CAPTIONS

33. The captions and paragraph headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any paragraph.

OVERDUE PAYMENTS

34. Any rent or other sums payable by Lessee to Lessor under this Lease that remain unpaid after Lessee has had an opportunity to cure non-payment, shall bear interest at a rate equal to twelve percent (12%) per annum.

NOTICES

35. Wherever in this Lease written notices are to be given or made, they will be sent by certified mail to the address listed below unless a different address shall be designated in writing and delivered to the other party.

LESSOR: City of Everett
City Clerk's Office
2930 Wetmore Avenue
Everett, Washington 98201

LESSEE: Workforce Development Council Snohomish County
808 134th St. SW, Suite 105
Everett, WA 98204

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names.

City of Everett	Workforce Development Council Snohomish County
	Erin Monroe
Ray Stephanson, Mayor	Erin Monroe, CEO
	10/20/16
Date	Date

Attest:

_____
Sharon Fuller, City Clerk

As to Form:

_____
James D. Iles, City Attorney

STATE OF WASHINGTON,)
)ss
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Ray Stephanson and Sharon Fuller signed this instrument, on oath stated that they authorized to execute the instrument and acknowledged it as the Mayor and City Clerk of the City of Everett, a municipal corporation, to be free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:_____

Signature of
Notary Public: _____

Printed Name: _____

My Commission Expires:_____

STATE OF WASHINGTON,)
)ss
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Erin Manroe signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the CEO of Workforce Development Council Snohomish County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10/20/16

Signature of
Notary Public: Barbara D. Browning

Printed Name: Barbara D. Browning

My Commission Expires: 5/9/17

BARBARA D. BROWNING
COMMISSION EXPIRES
NOTARY
PUBLIC
5-09-17
STATE OF WASHINGTON

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Amendment No. 1 to Homeland Security Grant Agreement with Snohomish County to receive grant funds to purchase three cargo containers for storing disaster related supplies

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

COUNCIL BILL #	
Originating Department	Fire
Contact Person	Brent Stainer
Phone Number	425-257-8109
FOR AGENDA OF	November 2, 2016

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
	Grant Agreement: April 6, 2016	Amendment No. 1	Fire

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s): Revenue GL 002-333-9706-735 Revenue Job Cost FD200-26-REV-3335 Expense GL 002-515-0001-350 Expense Job Cost FD200-26-300-0350
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:
The Homeland Security Grant Agreement with Snohomish County provides $7,500 to purchase three large cargo containers for storing disaster related supplies.

Two of the containers will be used by the Office of Emergency Management to store a generator and urban search and rescue expendables such as cribbing, shoring, and plywood. The third container will be used by the Animal Shelter to provide additional storage for animal shelter supplies used during a disaster.

The Amendment to the Agreement provides for an extension in the expiration date from 8/31/2016 to 12/31/2016. There is no change in the contract award amount.

RECOMMENDATION (Exact action requested of Council):
Authorize the Mayor to sign Amendment No. 1 to the Homeland Security Grant Agreement with Snohomish County to receive grant funds to purchase three cargo containers for storing disaster related supplies.

Snohomish County
HOMELAND SECURITY GRANT AGREEMENT FACE SHEET

1. Subrecipient Name and Address: **City of Everett** **c/o 2811 Oakes Ave** **Everett, WA 98201**	2. Grant Agreement Amount: **$ 7,500**	3. Grant Agreement Number: **E16-053-1 Everett**
4. Subrecipient Contact, phone: **Brent Stainer (425) 257-8109**	5. Grant Agreement Start Date: **9 / 1 / 2016**	6. Grant Agreement End Date: **12 / 31 / 2016**
7. County Program Manager (s), phone: **Bill Ekse, 425-388-5761** **Tammy Jones, (425) 388-5072**	8. Data Universal Numbering System (DUNS): **020619728**	9. UBI # (state revenue): **313-014-461**

10. Funding Authority: **Snohomish County** (County) , **Washington State Military Department** (the "Department ")
and the **U.S. Department of Homeland Security** (DHS)

11. Federal Funding Identification #: **EMW-2015-SS-00013-S01**	12. Federal Award Date: **8 / 12 / 2015**	13. Catalog of Federal Domestic Assistance (CFDA) # & Title: **97.067 – HSGP (SHSP-15)**
14. Total Federal Award Amount: **$13,512,908**	15. Program Index # & OBJ/SUB-OBJ: **753SZ, 753SH, 753SB, 753SL, 753SC, 753SQ / NZ**	16. TIN: **91-6001248**
17. Service Districts: BY LEGISLATIVE DISTRICTS:: **38,** BY CONGRESSIONAL DISTRICTS: **2**	18. Service Area by County(ies): **Snohomish**	19. Women/Minority-Owned, State Certified?: X N/A ☐ NO ☐ YES, OMWBE #_____

20. Agreement Classification ☐ Personal Services ☐ Client Services X Public/Local Gov't ☐ Research/Development ☐ A/E ☐ Other_____	21. Contract Type (check all that apply): ☐ Contract X Grant X Agreement ☐ Intergovernmental (RCW 39.34) ☐ Interagency
22. Subrecipient Selection Process: X "To all who apply & qualify" ☐ Competitive Bidding ☐ Sole Source ☐ A/E RCW ☐ N/A ☐ Filed w/OFM? ☐ Advertised? ☐ YES ☐NO _____	23. Subrecipient Type (check all that apply) ☐ Private Organization/Individual ☐ For-Profit X Public Organization/Jurisdiction X Non-Profit ☐CONTRACTOR X SUBRECIPIENT ☐ OTHER

24. PURPOSE & DESCRIPTION:

The purpose of the FFY 2015 Homeland Security Grant Program (15HSGP) is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for threats and hazards that pose the greatest risk to the security of the United States. 15HSGP provides funding to implement investments that build, sustain, and deliver the core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation. The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather, require the combined effort of the whole community. 15HSGP supports core capabilities across the five mission areas of Prevention, Protection, Mitigation, Response, and Recovery based on allowable costs. HSGP is comprised of three interconnected grant programs: State Homeland Security Program (SHSP), Urban Areas Security Initiative (UASI), and Operation Stonegarden (OPSG). Together, these grant programs fund a range of preparedness activities, including planning, organization, equipment, training, exercises, and management and administration.

The County is the Recipient and a Pass-through Entity of the 15HSGP Award, EMW-2015-SS-00013-S01 from DHS through the Department, and has made a subaward of funds to the Subrecipient. The Subrecipient is accountable to the County for use of Federal award funds provided under this Agreement. The Subrecipient's preparedness activities (scope), timeline (schedule) and budget for the subaward are detailed in Exhibits C, D, and E. Highlighted information in Exhibit C, Work Plan/Approved Projects, denote project scope that needs further development. This will be completed through amendment of this Agreement and by the time specified in Exhibit D, Timeline.

IN WITNESS WHEREOF, the County and Subrecipient acknowledge and accept the terms of this Agreement, including all referenced Exhibits and Attachments which are hereby incorporated in and made a part hereof, and have executed this Agreement as of the date below. This Agreement Face Sheet; Special Terms & Conditions (Exhibit A); General Terms and Conditions (Exhibit B); Work Plan/Approved Projects (Exhibit C); Timeline (Exhibit D); Budget (Exhibit E); and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

1. **Applicable Federal and State Statutes and Regulations**
2. **DHS/FEMA Award and program documents**
3. **Approved Projects**
4. **Special Terms and Conditions**
5. **General Terms and Conditions, and,**
6. **Other provisions of the Agreement incorporated by reference.**

WHEREAS, the parties hereto have executed this Agreement on the day and year last specified below.

FOR THE COUNTY:

Signature Date
Dave Somers, County Executive

APPROVED AS TO FORM:
Rebecca Guadamud 10/1/15

FOR THE SUBRECIPIENT:

Signature Date
Ray Stephanson, City of Everett Mayor

APPROVED AS TO FORM: City Attorney

Date

ATTEST: City Clerk

Date

SPECIAL TERMS AND CONDITIONS

ARTICLE I -- KEY PERSONNEL

The individuals listed below shall be considered key personnel for point of contact under this Agreement. Any substitution of key personnel by either party shall be made by written notification to the current key personnel.

COUNTY		SUBRECIPIENT	
Name	**Tammy Jones**	Name	**Brent Stainer**
Title	**Region 1 Coordinator**	Title	**Director Emergency Management**
E-Mail	**Tammy.Jones@co.snohmish.wa.us**	E-Mail	**BStainer@everettwa.gov**
Phone	**(425) 388-5072**	Phone	**425-257-8109**
Name	**Bill Ekse**	Name	**Lynn Sterbenz**
Title	**Program Manager**	Title	**Em. Planning & Ops. Coordinator**
E-Mail	**Bill.Ekse@co.snohomish.wa.us**	E-Mail	**LSterbenz@everettwa.gov**
Phone	**(425) 388-5061**	Phone	**425-257-8111**
Name		Name	
Title		Title	
E-Mail		E-Mail	
Phone		Phone	

ARTICLE II -- ADMINISTRATIVE AND/OR FINANCIAL REQUIREMENTS

The Subrecipient shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by FEMA applicable to the 15HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of the "Department of Homeland Security Notice of Funding Opportunity Fiscal Year 2015 Homeland Security Grant Program" document published by FEMA, the DHS Award Letter for Grant No. EMW-2015-SS-00013-S01, and the federal regulations commonly applicable to DHS/FEMA grants, all of which are incorporated herein by reference.

The Subrecipient acknowledges that since this Agreement involves federal award funding, the period of performance described herein may begin prior to the availability of appropriated federal funds. The Subrecipient agrees that it will not hold the County, Department, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

A. STATE AND FEDERAL REQUIREMENTS FOR DHS/FEMA PREPAREDNESS GRANTS:

The following requirements apply to all DHS/FEMA Preparedness Grants administered by the County.

1. SUBAWARDS & CONTRACTS BY SUBRECIPIENTS

a. The Subrecipient must make a case-by-case determination whether each agreement it makes for the disbursement of 15HSGP funds received under this Agreement casts the party receiving the funds in the role of a subrecipient or contractor in accordance with 2 CFR 200.330.

b. If the Subrecipient becomes a pass-through entity by making a subaward to a non-federal entity as its subrecipient:

i. The Subrecipient must comply with all federal laws and regulations applicable to pass-through entities of 15HSGP funds, including but not limited to those contained in 2 CFR 200.

ii. The Subrecipient shall require its subrecipient to comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by DHS/FEMA applicable to the 15HSGP Program, including, but not limited to, all criteria, restrictions, and requirements of the "Department of Homeland Security Notice of Funding Opportunity Fiscal Year 2015 Homeland Security Grant Program" document published by FEMA, the DHS Award Letter for Grant No. EMW-2015-SS-00013-S01, and the federal regulations commonly applicable to DHS/FEMA grants

iii. The Subrecipient shall be responsible to the County for ensuring that all 15HSGP federal award funds provided to its subrecipient are used in accordance with applicable federal and state statutes and regulations, and the terms and conditions of the federal award set forth in Attachment #1 of this Agreement.

2. REIMBURSEMENT & BUDGET REQUIREMENTS

a. Within the total Grant Agreement Amount, travel, sub-contracts, salaries, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.

b. The maximum amount of all reimbursement requests permitted to be submitted under this Agreement, including the final reimbursement request, is limited to and shall not exceed the total Grant Agreement Amount.

c. If the Subrecipient chooses to include indirect costs within the Budget (Exhibit E), an indirect cost rate agreement negotiated between the federal cognizant agency for indirect costs and the Subrecipient establishing approved indirect cost rate(s) as described in 2 CFR 200.414 and Appendix VII to 2 CFR 200 must be submitted to the County. However, under 2 CFR 200.414(f), if the Subrecipient has never received a negotiated indirect cost rate agreement establishing federally negotiated rate(s), the Subrecipient may negotiate a rate with the County or charge a de minimis rate of 10% of modified total direct costs. The Subrecipient's actual indirect cost rate may vary from the approved rate, but must not exceed the indirect cost rate percentage identified in Exhibit E, Budget. If a Subrecipient chooses to charge the 10% de minimis rate, but did not charge indirect costs to previous subawards, a request for approval to charge indirect costs must be submitted to the County Key Personnel for approval with an explanation for the change.

d. For travel costs, Subrecipients shall comply with 2 CFR 200.474 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at http://www.gsa.gov, and follow the most restrictive. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without written prior approval by County Key Personnel.

e. Copies of receipts and/or backup documentation for any approved items that are authorized under this Agreement must be included with the Subrecipients reimbursement requests. Originals are to be maintained by the Subrecipient consistent with record retention requirements of this Agreement, and be made available upon request by the County, the Department, and local, state, or federal auditors.

f. The Subrecipient will submit reimbursement requests to the County by submitting a properly completed State A-19 Invoice Form and Reimbursement Spreadsheet (in the format provided by the County), or a comparable invoice detailing the expenditures for which reimbursement is sought. Reimbursement requests must be submitted to the County's Key Personnel at least quarterly, but not more frequently than monthly.

g. Any request for extension of a due date in the Milestone Timeline (Exhibit D) will be treated as a request for Amendment of the Agreement and must be submitted to the County's Key Personnel sufficiently in advance of the due date to provide adequate time for County review and consideration, and can be granted or denied within the County's sole discretion.

h. All work under this Agreement must end on or before the Grant Agreement End Date, and the final reimbursement request must be submitted to the County within 20 days after the Grant Agreement End Date, except as otherwise authorized by written amendment of this Agreement and issued by the County.

i. No costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the Subrecipient, its contractor, or any non-federal entity to which the Subrecipient makes a subaward, and is invoiced by the vendor.

j. Failure to timely submit complete reports and reimbursement requests as required by this Agreement (including but not limited to those reports in the Milestone Timeline) will prohibit the Subrecipient from being reimbursed until such complete reports and reimbursement requests are submitted and the County has had reasonable time to conduct its review. Final reimbursement requests will not be approved for payment until the Subrecipient is current with all reporting requirements contained in this Agreement. Any disallowed costs by the County or DHS previously reimbursed by the County to the Subrecipient, will be due to the County 30 days upon demand.

k. A written amendment will be required if the Subrecipient expects cumulative transfers between project budgets, as identified in the Budget (Exhibit E) and Work Plan/Approved Project (Exhibit C), to exceed 10% of the Grant Agreement Amount. Any adjustments to project totals not in compliance with this paragraph will not be reimbursed.

l. Subrecipients shall only use federal award funds under this Agreement to supplement existing funds, and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The Subrecipient may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

2. REPORTING REQUIREMENTS

a. The Subrecipient shall submit with each reimbursement request a report indicating the status of Work Plan activities for which reimbursement is sought in the format provided by the County.

b. The Subrecipient shall also comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete and return to the County the FFATA Form located at http://mil.wa.gov/emergency-management-

division/grants/requiredgrantforms; which is incorporated by reference and made a part of this Agreement.

c. The Subrecipient shall participate in the State's annual capabilities assessment for the State Preparedness Report.

3. EQUIPMENT AND SUPPLY MANAGEMENT

a. Subrecipients and any non-federal entity to which the Subrecipient makes a subaward shall comply with 2 CFR 200.318 – 200.326, to include but not limited to:

i. Upon successful completion of the terms of this Agreement, all equipment and supplies purchased through this Agreement will be owned by the Subrecipient, or a recognized non-federal entity to which the Subrecipient has made a subaward, for which a contract, subrecipient grant agreement, or other means of legal transfer of ownership is in place.

ii. All equipment, and supplies as applicable, purchased under this Agreement will be recorded and maintained in the Subrecipient's inventory system.

iii. Equipment records shall include: a description of the property; the manufacturer's serial number, model number, or other identification number; the source of the equipment, including the Federal Award Identification Number (FAIN); Catalogue of Federal Domestic Assistance (CFDA) number; who holds the title; the acquisition date; the cost of the equipment and the percentage of Federal participation in the cost; the location, use and condition of the equipment at the date the information was reported; and disposition data including the date of disposal and sale price of the property.

iv. The Subrecipient shall take a physical inventory of the equipment and reconcile the results with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Subrecipient to determine the cause of the difference. The Subrecipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

v. The Subrecipient shall be responsible for any and all operational and maintenance expenses and for the safe operation of their equipment and supplies including all questions of liability. The Subrecipient shall develop appropriate maintenance schedules and procedures to ensure the equipment and supplies are well maintained and kept in good operating condition.

vi. The Subrecipient must obtain and maintain all necessary certifications and licenses for the equipment.

vii. The Subrecipient shall develop a control system to ensure adequate safeguards to prevent loss, damage, and theft of the property. Any loss, damage, or theft shall be investigated and a report generated and sent to the County.

viii. If the Subrecipient is authorized or required to sell the property, proper sales procedures must be established and followed to ensure the highest possible return.

ix. If, upon termination or at the Grant Agreement End Date, there is a residual inventory of unused supplies exceeding $5,000 in total

aggregate value which will not be needed for any other Federal award, or when original or replacement equipment is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, the Subrecipient must comply with following procedures:

A. The Subrecipient may retain the supplies for use on other non-Federal related activities or sell them, but must compensate the Federal sponsoring agency for its share.

B. The Subrecipient must dispose of equipment as follows:

i. Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of by the Subrecipient with no further obligation to the awarding agency.

ii. Items of equipment with a current per-unit fair market value of more than $5,000 may be retained or sold and the Subrecipient shall compensate the Federal-sponsoring agency for its share.

x. Records for equipment shall be retained by the Subrecipient for a period of six years from the date of the disposition, replacement, or transfer. If any litigation, claim, or audit is started before the expiration of the six year period, the records shall be retained by the Subrecipient until all litigation, claims, or audit findings involving the records have been resolved.

b. The Subrecipient shall comply with EMD's Purchase Policy contained within the EMD Purchase Workbook version 2015.1 located at http://mil.wa.gov/emergency-management-division/grants/homeland-security-grants, incorporated by reference and made part of this Agreement. No reimbursement will be provided unless the appropriate approval has been received.

c. Allowable equipment and supply categories for 15HSGP are listed on the Authorized Equipment List (AEL) located on the FEMA website at http://www.fema.gov/preparedness-non-disaster-grants.The AEL consists of 21 categories which are divided into sub-categories. It is important the Subrecipient and any non-federal entity to which the Subrecipient makes a subaward regard the AEL as an authorized purchasing list identifying items allowed under the specific grant program, and includes items that may not be categorized as equipment according to the federal, state, local, and tribal definitions of equipment. Subrecipients are solely responsible for ensuring equipment purchased items under this Agreement are authorized as allowed items by the AEL at time of purchase.

If the item is not identified on the AEL as allowable under HSGP, Subrecipients must contact the County Key Personnel for assistance in seeking FEMA approval prior to acquisition.

d. Unless expressly provided otherwise, all equipment must meet all mandatory regulatory and/or DHS/FEMA adopted standards to be eligible for purchase using Federal award funds.

e. Equipment purchased with DHS federal award funds is to be marked with "Purchased with funds provided by the U.S. Department of Homeland Security" when practicable.

f. Prior to procuring pharmaceuticals, Subrecipients must have in place an inventory management plan to avoid large periodic variations in supplies due to coinciding purchase and expiration dates. Subrecipients are encouraged to enter into rotational procurement agreements with vendors and distributors. Purchases of pharmaceuticals must include a budget for the disposal of expired drugs within each fiscal year's period of performance for 15HSGP. The cost of disposal cannot be carried over to another DHS/FEMA grant or grant period.

g. As a subrecipient of federal funds, the Subrecipient must pass on equipment and supply management requirements that meet or exceed the requirements outlined above to any non-federal entity to which the Subrecipient makes a subaward of federal award funds under this Agreement.

4. ENVIRONMENTAL AND HISTORICAL PRESERVATION

The Subrecipient shall ensure full compliance with the DHS/FEMA Environmental Planning and Historic Preservation (EHP) Program. Subrecipients are required to comply with DHS/FEMA EHP Policy Guidance which can be found at https://www.fema.gov/office-environmental-planning-and-historic-preservation; FP 108-023-1 Environmental Planning and Historic Preservation Policy Guidance at http://www.fema.gov/media-library/assets/documents/85376; and FP 108.24.4 Environmental Planning and Historical Preservation Policy at https://www.fema.gov/media-library/assets/documents/101537, all of which are incorporated in and made a part of this Agreement.

a. Subrecipients proposing projects that have the potential to impact the environment, including, but not limited to, construction of communication towers, modification or renovation of existing buildings, structures and facilities, or new construction including replacement of facilities, must participate in the DHS/FEMA EHP review process prior to project initiation. Modification of existing buildings, including minimally invasive improvements such as attaching monitors to walls, and training or exercises occurring outside in areas not considered previously disturbed also require a DHS/FEMA EHP review before project initiation.

b. The EHP review process involves the submission of a detailed project description that explains the goals and objectives of the proposed project along with supporting documentation so FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties.

c. The Subrecipient agrees that to receive any federal preparedness funding, all EHP compliance requirements outlined in applicable guidance must be met. The EHP review process must be completed before funds are reimbursed. Expenditures for projects started before EHP process review completion approval is received will not be reimbursed.

5. PROCUREMENT

a. The Subrecipient shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Exhibit B, A.28.

b. For all sole source contracts expected to exceed $150,000, the Subrecipient must submit to the County for pre-procurement review and approval the procurement documents, such as requests for proposals, invitations for bids and independent cost estimates. This requirement must be passed on to any non-federal entity to which the Subrecipient makes a subaward, at which point the Subrecipient will be responsible for

reviewing and approving sole source justifications of any non-federal entity to which the Subrecipient makes a subaward.

6. SUBRECIPIENT MONITORING

a. The County will monitor the activities of the Subrecipient from award to closeout. The goal of the County's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.

b. To document compliance with 2 CFR Part 200 Subpart F requirements, the Subrecipient shall complete and return to the County 2 CFR Part 200 Subpart F Audit Certification Form" located at http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms with the signed Agreement and each fiscal year thereafter until the Agreement is closed, which is incorporated by reference and made a part of this Agreement.

c. Monitoring activities may include, but are not limited to:
   i. review of financial and performance reports;
   ii. monitoring and documenting the completion of Agreement deliverables;
   iii. documentation of phone calls, meetings, e-mails, and correspondence;
   iv. review of reimbursement requests and supporting documentation to ensure allowability and consistency with Agreement work plan, budget, and federal requirements;
   v. observation and documentation of Agreement-related activities, such as exercises, training, funded events, and equipment demonstrations;
   vi. on-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.

d. The Subrecipient is required to meet or exceed the monitoring activities, as outlined above and in 2 CFR Part 200, for any non-federal entity to which the Subrecipient makes a subaward as a pass-through entity under this Agreement.

e. Compliancy will be monitored throughout the performance period to assess risk. Concerns will be addressed through a Corrective Action Plan.

7. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

All subrecipients must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-

21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at https://www.dhs.gov/guidance-published-help-department -supported-organizations-provide-meaningful-access-people-limitedand additional resources on http://www.lep.gov.

8. **NIMS COMPLIANCE**

a. The National Incident Management System (NIMS) identifies concepts and principles that answer how to manage emergencies from preparedness to recovery regardless of their cause, size, location, or complexity. NIMS provides a consistent, nationwide approach and vocabulary for multiple agencies or jurisdictions to work together to build, sustain, and deliver the core capabilities needed to achieve a secure and resilient nation.

b. Consistent implementation of NIMS provides a solid foundation across jurisdictions and disciplines to ensure effective and integrated preparedness, planning, and response. NIMS empowers the components of the National Preparedness System, a requirement of Presidential Policy Directive (PPD)-8, to guide activities within the public and private sector and describes the planning, organizational activities, equipping, training and exercising needed to build and sustain the core capabilities in support of the National Preparedness Goal.

c. The Subrecipient agrees that in order to receive FFY 2015 federal preparedness funding, to include HSGP, NIMS compliance requirements for 2015 must be met.

B. **HSGP SPECIFIC REQUIREMENTS**

1. 15HSGP stipulates the following for overall grant funding; specific caps or thresholds for this Agreement may differ:

a. Up to 5% percent of the HSGP award received by the County may be used for management and administrative purposes directly related to administration of the HSGP grant. The maximum percentage of the Grant Agreement Amount that may be used by the Subrecipient for management and administration costs under this Agreement is identified in the Budget (Exhibit E), and may be less than, but will not exceed, the maximum 5%.

b. At least 25% of the combined HSGP award allocated under SHSP and UASI are to be dedicated towards law enforcement terrorism prevention activities (LETPA). The LETPA percentage of the Grant Agreement Amount that must be met as a minimum requirement of this Agreement by the Subrecipient is identified in the Budget (Exhibit E) and may differ from the combined 25% requirement.

c. The combined total of personnel expenses may not exceed 50% percent of the HSGP award received by the County unless a Personnel Cap Waiver has been received from DHS. The maximum percentage of the Grant Agreement Amount that may be used by the Subrecipient for personnel expenses under this Agreement is identified in the Budget (Exhibit E) and may differ from the 50% HSGP limit.

2. SHSP-funded projects must address high-priority preparedness gaps across all core capabilities where a **nexus to terrorism** exists. All supported investments

are based on capability targets and gaps identified during the assessment process.

3. The Subrecipient shall use HSGP funds only to perform tasks as described in the Work Plan, as approved by the County and Department, and in compliance with this Agreement.

4. Subrecipients are required to develop a multi-year Training and Exercise Plan (TEP) that identifies training and exercise priorities and activities. Inclusion in the State's TEP meets the intent of this requirement. Subrecipients that choose to develop their own TEP shall submit it to hseep@fema.dhs.gov and emd.training@mil.wa.gov no later than June 1st annually.

   a. Subrecipients are encouraged to participate in the State's annual Training and Exercise Planning Workshop (TEPW) or may conduct their own local/regional TEPW.

5. Subrecipients will develop and maintain a progressive exercise program consistent with the Homeland Security Exercise and Evaluation Program (HSEEP) and support the National Exercise Program (NEP). Upon completion of an exercise, an After Action Report and an Improvement Plan must be prepared and submitted to hseep@fema.dhs.gov and emd.training@mil.wa.gov. Further information regarding the use of HSEEP can be found at https://hseep.preptoolkit.org/.

6. Subrecipients will provide reports and/or assist with completion of reports required by the HSGP federal award, including but not limited to the State Preparedness Report (SPR), Threat and Hazard Identification and Risk Assessment (THIRA), core capabilities assessment, and data calls.

C. DHS FFY15 HSGP TERMS AND CONDITIONS

As a subrecipient of 15HSGP Program funding, the Subrecipient shall comply with all applicable DHS Agreement Articles of the FFY15 HSGP Award Letter for DHS Grant No. EMW-2015-SS-00013-S01, incorporated in and made a part of this Agreement as Attachment #1.

GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/ Federal Emergency Management Agency (FEMA) Grants

A.1 DEFINITIONS

As used throughout this Grant Agreement, terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

a. "**Agreement**" means this Grant Agreement.

b. "**Department** " means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department. The Department is a recipient of a federal award directly from a federal awarding agency and is pass-through entity to the Department.

c. **"County"** or **"City"** means, a political sub-division of the State of Washington, or any of the officers or other officials lawfully representing the County or City. The County or City is a recipient of a federal award indirectly from a federal awarding agency and is a pass-through entity making and/or receiving a subaward as a subrecipient under this Agreement.

d. "**Subrecipient**" when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the County. However, the definition of "subrecipient" is the same as in 2 CFR 200.93 for all other purposes.

e. **"Monitoring Activities"** means all administrative, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.

f. **"Investment"** means the grant application submitted by the Subrecipient describing the project(s) for which federal funding is sought and provided under this Agreement. Such grant application is hereby incorporated into this Agreement by reference.

A.2 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

Non-federal entities, as subrecipients of a federal award, that expend $750,000 or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than $750,000 a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a State, local government, Indian tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or subrecipient.

Subrecipients that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The Subrecipient has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200 Subpart F.

The Subrecipient shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any sub-contractors also maintain auditable records. The Subrecipient is responsible for any audit exceptions incurred by its own

organization or that of its sub-contractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report.

The Subrecipient must respond to the County or the Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The County reserves the right to recover from the Subrecipient all disallowed costs resulting from the audit.

Once the single audit has been completed and it includes any audit findings, the Subrecipient must provide a full copy of the audit to the County and its corrective action plan no later than 9 months after the end of the Subrecipient's fiscal year(s) to:

Regional Coordinator
Snohomish County – Dept. of Emergency Management
720 80th Street SW, Building A
Everett, WA 98203-6217

If the Subrecipient claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the Subrecipient must send a letter identifying this Grant Agreement and explaining the criteria for exemption no later than nine (9) months after the end of the Subrecipient's fiscal year(s) to the address listed above.

The County retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

The Subrecipient shall include the above audit requirements in any subawards.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the Subrecipient's failure to comply with said audit requirements may result in one or more of the following actions in the County's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.3 ADVANCE PAYMENTS PROHIBITED

The County shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement. The Subrecipient shall not invoice the County in advance of delivery and invoicing of such goods or services.

A.4 AMENDMENTS AND MODIFICATIONS

The Subrecipient or the County may request, in writing, an amendment or modification of this Agreement. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the County and the Subrecipient. No other understandings or agreements, written or oral, shall be binding on the parties.

A.5 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

The Subrecipient must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

A.6 ASSURANCES

The County and Subrecipient agree that all activity pursuant to this Agreement will be conducted in accordance with all the applicable current federal, state and local laws, rules and regulations.

A.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the Subrecipient certifies that the Subrecipient is not presently debarred, suspended, proposed for debarment, declared

ineligible, or voluntarily excluded from participating in this Grant Agreement by any federal County or agency.

The Subrecipient shall complete, sign, and return a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form located at http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms. Any such form completed by the Subrecipient for this Agreement shall be incorporated into this Agreement by reference.

Further, the Subrecipient agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The Subrecipient certifies that it will ensure that potential contractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal County or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed $25,000, and subawards to subrecipients for any amount. With respect to covered transactions, the Subrecipient may comply with this provision by obtaining a certification statement from the potential contractor or subrecipient or by checking the System for Award Management (http://www.sam.gov) maintained by the federal government. The Subrecipient also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/). The Subrecipient also agrees not to enter into any agreements or contracts for the purchase of goods and services with any party on the Department of Enterprise Services' Debarred Vendor List (http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/Vendor-Debarment.aspx).

A.8 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the Subrecipient hereby certifies that to the best of its knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the Subrecipient to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; (2) that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the Subrecipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the Subrecipient will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.9 CONFLICT OF INTEREST

No officer or employee of the County; no member, officer, or employee of the Subrecipient or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of the Subrecipient who exercises any functions or responsibilities with respect to the project

during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The Subrecipient shall incorporate, or cause to incorporate, in all such contracts or subawards, a provision prohibiting such interest pursuant to this provision.

A.10 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND POLICIES

The Subrecipient and all its contractors and subrecipients shall comply with, and the County is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

In the event of noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy by the Subrecipient, its contractors or subrecipients, the County may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion. The Subrecipient is responsible for all costs or liability arising from its failure, and that of its contractors and subrecipients, to comply with applicable laws, regulations, executive orders, OMB Circulars, or policies.

A.11 CONTRACTING & PROCUREMENT

a. The Subrecipient shall use a competitive procurement process in the procurement and award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 2CFR Part 200.318 General procurement standards through 200.326 Contract Provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the Subrecipient under this Agreement must include the following provisions, as applicable:

1) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

2) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

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

5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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

7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide

exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

10) Procurement of recovered materials -- As required by 2 CFR 200.322, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

11) Notice of Federal awarding agency requirements and regulations pertaining to reporting.

12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.

13) Access by the County, the Department , the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

14) Retention of all required records for six years after the Subrecipient has made final payments and all other pending matters are closed.

15) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

b. The County reserves the right to review the Subrecipient procurement plans and documents, and require the Subrecipient to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.318 through 200.326/. The Subrecipient must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the Subrecipient and County to make a determination on eligibility of project costs.

c. All sub-contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.12 DISCLOSURE

The use or disclosure by any party of any information concerning the County, or State and Federal agencies for any purpose not directly connected with the administration of the County's or the Subrecipient's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the County or as required to comply with the state Public Records Act, other law or court order.

A.13 DISPUTES

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the County, a representative appointed by the Contractor and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member.

A.14 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the Subrecipient, its successors or assigns, will protect, save and hold harmless the County, the Department, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the Subrecipient, its sub-contractors, subrecipients, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the Subrecipient further agrees to defend the County, the Department and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the County or the Department ; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the County or the Department , and (2) the Subrecipient, its agents or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Subrecipient, or Subrecipient's agents or employees.

Insofar as the funding source, the Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), is an agency of the Federal government, the following shall apply:

44 CFR 206.9 Non-liability. The Federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the federal government in carrying out the provisions of the Stafford Act.

A.15 LIMITATION OF AUTHORITY – Authorized Signature

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the County's Authorized Signature representative and the Authorized Signature representative of the Subrecipient or Alternate for the Subrecipient, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or

condition of this Agreement is not effective or binding unless made in writing and signed by both parties Authorized Signature representatives. Further, only the Authorized Signature representative or Key Personnel for the Subrecipient shall have signature authority to sign reimbursement requests, time extension requests, amendment and modification requests, requests for changes to projects or work plans, and other requests, certifications and documents authorized by or required under this Agreement.

A.16 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the County may unilaterally reduce the scope of work and budget or unilaterally terminate all or part of the Agreement as a "Termination for Cause" without providing the Subrecipient an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the County has no obligation to do so.

A.17 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Subrecipient.

A.18 NONDISCRIMINATION

The Subrecipient shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.19 NOTICES

The Subrecipient shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and regulations, and shall maintain a record of this compliance.

A.20 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/ HEALTH ACT (OSHA/WISHA)

The Subrecipient represents and warrants that its work place does now or will meet all applicable federal and state safety and health regulations that are in effect during the Subrecipient's performance under this Agreement. To the extent allowed by law, the Subrecipient further agrees to indemnify and hold harmless the County and its employees and agents from all liability, damages and costs of any nature, including but not limited to, costs of suits and attorneys' fees assessed against the County, as a result of the failure of the Subrecipient to so comply.

A.21 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The County makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this subaward of funds does not and will not acquire any ownership interest or title to such property of the Subrecipient. The Subrecipient shall assume all liabilities and responsibilities arising from the ownership and operation of the project and agrees to indemnify and hold the County, the Department , the state of Washington and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.

A.22 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.23 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The assistance provided under this Agreement shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such assistance or any other approval or concurrence under this Agreement; provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

A.24 PUBLICITY

The Subrecipient agrees to submit to the County prior to issuance all advertising and publicity matters relating to this Agreement wherein the County's name is mentioned or language used from which the connection of the County's name may, in the County's judgment, be inferred or implied. The Subrecipient agrees not to publish or use such advertising and publicity matters without the prior written consent of the County. The Subrecipient may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

Publication resulting from work performed under this Agreement shall include an acknowledgement of FEMA's financial support, by CFDA number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.25 RECAPTURE PROVISION

In the event the Subrecipient fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations and/or the provisions of the Agreement, the County reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement termination. Repayment by the Subrecipient of funds under this recapture provision shall occur within 30 days of demand.

In the event the County is required to institute legal proceedings to enforce the recapture provision, the County shall be entitled to its costs and expenses thereof, including attorney fees.

A.26 RECORDS

a. The Subrecipient agrees to maintain all books, records, documents, receipts, invoices, and all other electronic or written records necessary to sufficiently and properly reflect the Subrecipient's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
b. The Subrecipient's records related to this Agreement and the projects funded may be inspected and audited by the County the Department or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the Subrecipient with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
c. The records shall be made available by the Subrecipient for such inspection and audit, together with suitable space for such purpose, at any and all times during the Subrecipient's normal working day.
d. The Subrecipient shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) years must be followed.

A.27 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the County undertakes to assist the Subrecipient with the project/statement of work/work plan (project) by providing Federal award funds pursuant to this Agreement, the project itself remains the sole responsibility of the Subrecipient. The County undertakes no responsibility to the Subrecipient, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the Subrecipient, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the Subrecipient shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including but not limited to FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws, regulations and executive orders.

The Subrecipient shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the Subrecipient in connection with the project. The Subrecipient shall not look to the County, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.28 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable.

A.29 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The Subrecipient, and/or employees or agents performing under this Agreement are not employees or agents of the County in any manner whatsoever. The Subrecipient will not be presented as, nor claim to be, an officer or employee of the County by reason of this Agreement, nor will the Subrecipient make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the County, the Department or of the State of Washington by reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

A.30 TAXES, FEES, AND LICENSES

Unless otherwise provided in this Agreement, the Subrecipient shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the Subrecipient or its staff required by statute or regulation that are applicable to Agreement performance.

A.31 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the Subrecipient may terminate this Agreement by providing written notice of such termination to the County's Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the County, in its sole discretion and in the best interests of the State of Washington, may terminate this Agreement in whole or in part by providing ten (10) calendar days written notice, beginning on the second day after mailing to the Subrecipient. Upon notice of termination for convenience, the County

reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds. In the event of termination, the Subrecipient shall be liable for all damages as authorized by law. The rights and remedies of the County provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.32 TERMINATION OR SUSPENSION FOR CAUSE

In the event the County, in its sole discretion, determines the Subrecipient has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the Subrecipient unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the County has the right to immediately suspend or terminate this Agreement in whole or in part.

The County may notify the Subrecipient in writing of the need to take corrective action and provide a period of time in which to cure. The County is not required to allow the Subrecipient an opportunity to cure if it is not feasible as determined solely within the County's discretion. Any time allowed for cure shall not diminish or eliminate the Subrecipient liability for damages or otherwise affect any other remedies available to the County. If the County allows the Subrecipient an opportunity to cure, the County shall notify the Subrecipient in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the County, or if such corrective action is deemed by the County to be insufficient, the Agreement may be terminated in whole or in part.

The County reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Subrecipient from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Subrecipient, if allowed, or pending a decision by the County to terminate the Agreement in whole or in part. In the event of termination, the Subrecipient shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the County provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law. If it is determined that the Subrecipient: (1) was not in default or material breach, or (2) failure to perform was outside of the Subrecipient's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

A.33 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the County terminates this Agreement, the Subrecipient shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the County may require the Subrecipient to deliver to the County any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the County shall pay to the Subrecipient as an agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the County prior to the effective date of Grant Agreement termination, the amount agreed upon by the Subrecipient and the County for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the County , (iii) other work, services and/or equipment or supplies which are accepted by the County , and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the County shall determine the extent of the liability of the County. The County shall have no other obligation to the Subrecipient for termination. The County may withhold from any amounts due the Subrecipient such sum as the County determines to be necessary to protect the County against potential loss or liability. The rights and remedies of the County provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the County in writing, the Subrecipient shall:

a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
b. Place no further orders or sub-contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
c. Assign to the County , in the manner, at the times, and to the extent directed by the County, all of the rights, title, and interest of the Subrecipient under the orders and sub-contracts so terminated, in which case the County has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;
d. Settle all outstanding liabilities and all claims arising out of such termination of orders and contracts, with the approval or ratification of the County to the extent the County may require, which approval or ratification shall be final for all the purposes of this clause;
e. Transfer title to the County and deliver in the manner, at the times, and to the extent directed by the County any property which, if the Agreement had been completed, would have been required to be furnished to the County;
f. Complete performance of such part of the work as shall not have been terminated by the County in compliance with all contractual requirements; and
g. Take such action as may be necessary, or as the County may require, for the protection and preservation of the property related to this Agreement which is in the possession of the Subrecipient and in which the County has or may acquire an interest.

A.34 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The Subrecipient is encouraged to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The Subrecipient may set utilization standards, based upon local conditions or may utilize the state of Washington MWBE goals, as identified in WAC 326-30-041.

A.35 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the County in writing. The County's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

A.36 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by, the laws of the state of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Snohomish County, Washington. The Subrecipient, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

WORK PLAN/APPROVED PROJECTS

2015 Homeland Security Grant (HSGP)
State Homeland Security Program (SHSP)

Agency: CITY OF EVERETT

As the Pass-through Entity (PTE), the Washington State Military Department (WMD) Emergency Management Division's (EMD) Preparedness Grants Section (PGS), referenced as the Department is responsible for ensuring federal funding is expended and programs implemented in full accordance with governing law and regulations. Eighty-percent of the state's award is allocated to local and tribal units of government in accordance with Federal guidelines. Washington State is divided into nine Homeland Security Regions. Funding is allocated to the Regions according to a county base, population, and population density funding formula. The remaining twenty percent is allocated to state agencies using a sustainment funding model.

WA State HLS Region 1 is in the northwest corner of the state and is made up of five counties, and nine tribes; with the Canadian/International border to the north and is home to a population of over 1 million people. Terrorist targets include

- Four major oil refineries producing gas, diesel, and jet fuel (including BP's Cherry Point refinery the largest in WA). These refineries feed the 300 mile long Olympic Pipe line running from Blaine, WA, to Portland, OR. Bakken oil trains run daily across the region (through populated/urban areas).
- The Naval Station Everett which is the homeport for the USS Nimitz, nuclear aircraft carrier.
- Each county within Region 1 has terminals that are part of the Washington State Ferry System (named by the FBI as the number one target for maritime terrorism in the country).

Our all-hazard risks include two volcanos (Glacier Peak and Mt. Baker). Region 1 sits on the South Whidbey Island Earthquake Fault capable of unleashing a devastating 7.5-magnitude earthquake, and is situated off the WA coast.

The State THIRA and SPR combined with local gap assessments were all used to inform our 2015 SHSP Region 1 projects. Planning is a high SPR priority with a medium assessed capability. Community Resilience and Public Information and Warning are medium statewide SPR priorities that have moderate to low level assessments. Planning is a high priority for our region due to numerous terrorist and all hazards threats. Our investments in whole-community educational materials for public training and school presentations combined with multimedia campaigns like "Take Winter by Storm" will help raise our capability rating – again driven by the nature of our terrorist and all hazards threats. The Washington Statewide Communications Interoperability Plan (SCIP) outlined significant gaps in communications interoperability. Our investments in cache multiband radios, and repeater upgrades (in remote mountainous locations to support SAR operations) will improve responder communications.

Region 1 is composed of Island, San Juan, Skagit, Snohomish, and Whatcom Counties. **Snohomish County is the designated Region 1 Homeland Security Coordinating Office and the point of contact for the Region 1 Investment**, which was submitted as part of the Washington State FY15 SHSP Investment Justification. The following projects were approved as a part of the Investment. **The City of Everett is within Snohomish County and approved as follows:**

PROJECT #1	Planning (Sustainment) & Threat and Hazard Identification & Risk Assessment (THIRA)	
DESCRIPTION:	Strengthen individual and Regional coordination through consistent and coordinated all-hazards, whole community planning, continued compliance with NIMS requirements, follow through on Homeland Security program deliverables, information sharing (with counties, tribes, and state and federal agencies), and general grant management support including audits and subrecipient monitoring. This includes possible funding in all POETE elements. Participate in the development and maintenance of THIRA documents, Training and Exercise planning, the statewide and UASI Strategic Plans, as called upon the S.A.C., and the State Preparedness Report. Our current regional capability ranking is 3.8 on a scale of 1 to 5 (5 being fully capable)	
PROJECT #2	Community Resilience & Public Information and Warning	
DESCRIPTION:	Planning, outreach, and education to ensure whole community resiliency. Participate in outreach activities and purchase outreach materials. Support public education campaigns through development, printing, and media expenses designed to encourage actual preparedness activities. Purchase of public warning equipment like AHABs, highway signs, etc. and fund JIS/JIC training. Exercise plans. Our current regional capability ranking is 4 on a scale of 1 to 5. (5 being fully capable). **City of Everett is authorized to purchase three large cargo containers to be used for the storage of emergency shelter equipment and supplies to support Community Resilience.**	

PROJECT #3	CBRNE Response	
DESCRIPTION:	Including the funding of equipment to support the following project areas: Forensics & Attribution; Interdiction & Disruption; Mass Search & Rescue operations; On-scene Security & Protection; Screening, Search, & Detection; Response - Health and Safety. This project includes the funding support of marine and aviation response assets. Our current regional capability ranking is 3 on a scale of 1 to 5. (5 being fully capable). **City of Everett is authorized to purchase search and rescue equipment as funding allows.**	
PROJECT #4	Communications: Operational Communications & Operational Coordination	
DESCRIPTION:	This project supports the funding of equipment for EOC capability and emergency power upgrades; fiber-optic connectivity, equipment and training for communications – voice and data (EOC, responder, and amateur); as well as interface training and exercise for EOC/IC, IMT/EOC, etc. Our current regional capability ranking is 3.5 on a scale of 1 to 5. (5 being fully capable)	

MILESTONE TIMELINE

FFY15 Homeland Security Grant Program (HSGP), State Homeland Security Program (SHSP)

DATE	TASK
September 1, 2016	Start of Agreement performance period, or date of contract execution.
Monthly / Quarterly	Submission of Reimbursement Requests and Progress Reports (**monthly preferred**, but at least quarterly)
December 31, 2016	All work ceases. Grant Agreement End Date.
January 20, 2017	Submit **Closeout** Report and **Final Reimbursement Request** on or before this date. Reports are due before final invoice will be reimbursed.

Exhibit E

CITY OF EVERETT BUDGET

FFY15 Homeland Security Grant Program (HSGP)
State Homeland Security Program (SHSP)

PROJECT	SOLUTION AREA	AMOUNT	PERSONNEL	LETPA
PROJECT #1 Planning (Sustainment) & Threat and Hazard Identification & Risk Assessment (THIRA)	Planning			$ -
	Organization		$ -	
	Equipment	$ -		$ -
	Training		$ -	$ -
	Exercise		$ -	$ -
	Indirect 0%	$ -		$ -
	Subtotal	$ -	$ -	$ -
PROJECT #2 Community Resilience & Public Information and Warning	Planning		$ -	$ -
	Organization	$ -	$ -	
	Equipment	$ 7,500		$ -
	Training	$ -	$ -	$ -
	Exercise	$ -	$ -	$ -
	Indirect 0%	$ -		$ -
	Subtotal	$ 7,500	$ -	$ -
PROJECT #3 CBRNE Response	Planning	$ -	$ -	$ -
	Organization	$ -	$ -	$ -
	Equipment			
	Training	$ -	$ -	$ -
	Exercise	$ -	$ -	$ -
	Indirect 0%	$ -		$ -
	Subtotal	$ -	$ -	$ -
PROJECT #4 Communications: Operational Communications & Operational Coordination	Planning	$ -	$ -	$ -
	Organization	$ -	$ -	
	Equipment			
	Training	$ -	$ -	$ -
	Exercise	$ -	$ -	$ -
	Indirect 0%	$ -		$ -
	Subtotal	$ -	$ -	$ -
M&A	Salaries & Benefits		$ -	
	Overtime/Backfill	$ -	$ -	
	Goods & Services			
	Travel/Per Diem	$ -		
	Indirect 0%	$ -		
	Subtotal	$ -	$ -	$ -
	TOTAL Allocated AMOUNT:	**$ 7,500**	**$ -**	**$ -**
	Less County Agreement executed directly with the Department	**$ -**	**$ -**	**$ -**
	TOTAL Grant Agreement AMOUNT:	**$ 7,500**	**$ -**	**$ -**

GRANT AGREEMENT CAPS & THRESHOLDS

The Subgrantee ensures

The Personnel expenditures under this agreement will not exceed the percentage established within this budget. If the percentage is greater than 50%, the personnel costs over 50% will not be reimbursed unless a personnel cap waiver is approved by DHS.

Personnel Expenses: $0 **0% of Agreement Amount**

The total expenditures meeting the Law Enforcement Terrorism Prevention (LETPA) eligibility will equal or exceed the percentage established within this budget.

LETPA: $0 **0% of Agreement Amount**

Cumulative transfers to Projects in excess of 10% of Grant Agreement amount will not be reimbursed without prior written authorization from the County.

U.S. Department of Homeland Security
Washington, D.C. 20472

AGREEMENT ARTICLES
Homeland Security Grant Program

GRANTEE: Washington State Military Department

PROGRAM: Homeland Security Grant Program

AGREEMENT NUMBER: EMW-2015-SS-00013-S01

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Article I - Summary Description of Award

The purpose of the FY 2015 HSGP is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. The HSGP provides funding to implement investments that build, sustain, and deliver the 31 core capabilities essential to achieving the National Preparedness Goal (the Goal) of a secure and resilient Nation. The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather, require the combined effort of the whole community. This HSGP award consists of State Homeland Security Program (SHSP) funding in the amount of $6,493,000.00, Urban Areas Security Initiative (UASI) funding in the amount of $5,500,000.00, and Operation Stonegarden (OPSG) funding in the amount of $1,519,908.00. The following counties received Operation Stonegarden funds: Clallam County, $310,045.00; Colville Tribe, $70,000.00; Ferry County, $100,000.00; Island County, $150,092.00; Jefferson County, $74,000.00; Okanogan County, $140,000.00; Pend Oreille County, $78,000.00; San Juan County, $140,000.00; Stevens County, $90,000.00; and Whatcom County, $367,771.00.

Article II - Operation Stonegarden Program Hold

The recipients are prohibited from drawing down or reimbursing sub-recipients of Operation Stonegarden (OPSG) funding provided through this award until each unique, specific or modified county level, tribal or equivalent Operations Order and or Frag Order has been reviewed, and approved by official notification by DHS/FEMA and

Customs and Border Protection/United States Border Patrol (CBP/USBP). Each Operations Order will be transferred via the secure portal (CBP/USBP) BPETS system from each respective AOR Sector HQ to CBP/USBP HQ in Washington DC for review and pre-approval for Operational continuity, then forwarded to DHS/FEMA GPD/PGD OPSG Program Office for final review/approval. Official notification of approval will be sent by DHS/FEMA via email to the respective State Administrative Agency (SAA) and CBP/ USBP HQ in Washington DC.

Article III - Acknowledgement of Federal Funding from DHS

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

Article IV - Activities Conducted Abroad

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

Article V - Age Discrimination Act of 1975

All recipients must comply with the requirements of the *Age Discrimination Act of 1975* (42 U.S.C. § 6101 *et seq.*), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.

Article VI - Americans with Disabilities Act of 1990

All recipients must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12101–12213).

Article VII - Best Practices for Collection and Use of Personally Identifiable Information (PII)

All recipients who collect PII are required to have a publically-available privacy policy that describes what PII they collect, how they use the PII, whether they share PII with third parties, and how individuals may have their PII corrected where appropriate.

Award recipients may also find as a useful resource the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template respectively.

Article VIII - Title VI of the Civil Rights Act of 1964

All recipients must comply with the requirements of Title VI of the *Civil Rights Act of 1964* (42 U.S.C. § 2000d *et seq.*), which provides that no person in the United States will, 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. Implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

Article IX - Civil Rights Act of 1968

All recipients must comply with Title VIII of the Civil Rights Act of 1968, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. § 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in

buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (see 24 C.F.R. § 100.201).

Article X - Copyright

All recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of Government sponsorship (including award number) to any work first produced under Federal financial assistance awards, unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations).

Article XI - Assurances, Administrative Requirements and Cost Principles

Recipients of DHS federal financial assistance must complete OMB Standard Form 424B Assurances – Non-Construction Programs. Certain assurances in this document may not be applicable to your program, and the awarding agency may require applicants to certify additional assurances. Please contact the program awarding office if you have any questions.

The administrative and audit requirements and cost principles that apply to DHS award recipients originate from 2 C.F.R. Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, as adopted by DHS at 2 C.F.R. Part 3002.

Article XII - Debarment and Suspension

All recipients must comply with Executive Orders 12549 and 12689, which provide protection against waste, fraud and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the Federal government.

Article XIII - Drug-Free Workplace Regulations

All recipients must comply with the *Drug-Free Workplace Act of 1988* (41 U.S.C. § 701 *et seq.*), which requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. DHS has adopted the Act's implementing regulations at 2 C.F.R Part 3001.

Article XIV - Duplication of Benefits

Any cost allocable to a particular Federal award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

Article XV - Energy Policy and Conservation Act

All recipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issues in compliance with this Act.

Article XVI - Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. *Where and when to report.*
   i. You must report each obligating action described in paragraph a.1. of this award term to *http://www.fsrs.gov*.
   ii. For subaward information, report no later than the end of the month following the month in which the

obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at *http://www.fsrs.gov specify.*

b. Reporting Total Compensation of Recipient Executives.

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
   i. the total Federal funding authorized to date under this award is $25,000 or more;
   ii. in the preceding fiscal year, you received—
      (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
      (B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
   iii. The public does not have access to information about the compensation of the executives 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. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:
   i. As part of your registration profile at *https://www.sam.gov.*
   ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
   i. in the subrecipient's preceding fiscal year, the subrecipient received—
      (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
      (B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
   ii. The public does not have access to information about the compensation of the executives 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. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
   i. To the recipient.
   ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.,* between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

Subawards, And

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 CFR part 25:
   i. A Governmental organization, which is a State, local government, or Indian tribe;
   ii. A foreign public entity;
   iii. A domestic or foreign nonprofit organization;
   iv. A domestic or foreign for-profit organization;
   v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. *Executive* means officers, managing partners, or any other employees in management positions.
3. *Subaward:*
   i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
   ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec._____.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
   iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. *Subrecipient* means an entity that:
   i. Receives a subaward from you (the recipient) under this award; and
   ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
   i. *Salary and bonus.*
   ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
   iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
   iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
   v. *Above-market earnings on deferred compensation which is not tax-qualified.*
   vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

Article XVII - False Claims Act and Program Fraud Civil Remedies

All recipients must comply with the requirements of 31 U.S.C. § 3729 which set forth that no recipient of federal payments shall submit a false claim for payment. See also 38 U.S.C. § 3801-3812 which details the administrative remedies for false claims and statements made.

Article XVIII - Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129 and form SF-424B, item number 17 for additional information and guidance.

Article XIX - Fly America Act of 1974

All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the *International Air Transportation Fair Competitive Practices Act of 1974* (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

Article XX - Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the *Hotel and Motel Fire Safety Act of 1990*, 15 U.S.C. §2225a, all recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the *Federal Fire Prevention and Control Act of 1974*, as amended, 15 U.S.C. §2225.

Article XXI - Limited English Proficiency (Civil Rights Act of 1964, Title VI)

All recipients must comply with the *Title VI of the Civil Rights Act of 1964* (Title VI) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. In order to facilitate compliance with Title VI, recipients are encouraged to consider the need for language services for LEP persons served or encountered in developing program budgets. Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency* (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, *DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance https://www.dhs.gov/guidance-published-help-Department -supported-organizations-provide-meaningful-access- people-limited and additional resources on http://www.lep.gov.

Article XXII - Lobbying Prohibitions

All recipients must comply with 31 U.S.C. §1352, which provides that none of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.

Article XXIII - Non-supplanting Requirement

All recipients who receive awards made under programs that prohibit supplanting by law must ensure that Federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources. Where federal statues for a particular program prohibits supplanting, applicants or recipients may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than the receipt of expected receipt of Federal funds.

Article XXIV - Patents and Intellectual Property Rights

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards are in 37 C.F.R. Part 401 and the standard patent rights clause in 37 C.F.R. § 401.14.

Article XXV - Procurement of Recovered Materials

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

Article XXVI - Contract Provisions for Non-federal Entity Contracts under Federal Awards

a. Contracts for more than the simplified acquisition threshold set at $150,000.

All recipients who have contracts exceeding the acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by Civilian Agency Acquisition Council and the Defense Acquisition Regulation Council as authorized by 41 U.S.C. §1908, must address administrative, contractual, or legal remedies in instance where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.

b. Contracts in excess of $10,000.

All recipients that have contracts exceeding $10,000 must address termination for cause and for convenience by the non- Federal entity including the manner by which it will be effected and the basis for settlement.

Article XXVII - SAFECOM

All recipients who receive awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

Article XXVIII - Terrorist Financing E.O. 13224

All recipients must comply with U.S. Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of recipients to ensure compliance with the E.O. and laws.

Article XXIX - Title IX of the Education Amendments of 1972 (Equal Opportunity in Education Act)

All recipients must comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), which provides that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. Implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19

Article XXX - Trafficking Victims Protection Act of 2000

All recipients must comply with the requirements of the government-wide award term which implements Section 106(g) of the *Trafficking Victims Protection Act (TVPA) of 2000*, as amended (22 U.S.C. § 7104). This is implemented in accordance with OMB Interim Final Guidance, *Federal Register,* Volume 72, No. 218, November 13, 2007. Full text of the award term is located at 2 CFR § 175.15.

Article XXXI - Rehabilitation Act of 1973

All recipients of must comply with the requirements of Section 504 of the *Rehabilitation Act of 1973*, 29 U.S.C. § 794, as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any program or activity receiving Federal financial assistance. These requirements pertain to the provision of benefits or services as well as to employment.

Article XXXII - System of Award Management and Universal Identifier Requirements

A. Requirement for System of Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

C. Definitions

For purposes of this award term:

1. *System of Award Management(SAM)* means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at *http://www.sam.gov*).
2. *Unique entity identifier* means the identifier required for SAM registration to uniquely identify business entities.
3. *Entity,* as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
   a. A Governmental organization, which is a State, local government, or Indian Tribe;
   b. A foreign public entity;
   c. A domestic or foreign nonprofit organization;
   d. A domestic or foreign for-profit organization; and
   e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
4. *Subaward:*
   a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
   b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).
   c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
5. *Subrecipient* means an entity that:
   a. Receives a subaward from you under this award; and
   b. Is accountable to you for the use of the Federal funds provided by the subaward.

Article XXXIII - USA Patriot Act of 2001

All recipients must comply with requirements of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c. Among other things, the USA PATRIOT Act prescribes criminal penalties for possession of any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose

Article XXXIV - Use of DHS Seal, Logo and Flags

All recipients must obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

Article XXXV - Whistleblower Protection Act

All recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.

Article XXXVI - DHS Specific Acknowledgements and Assurances

All recipients must acknowledge and agree—and require any sub-recipients, contractors, successors, transferees, and assignees acknowledge and agree—to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Recipients must cooperate with any compliance review or complaint investigation conducted by DHS.
2. Recipients must give DHS access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. If, during the past three years, the recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS awarding office and the DHS Office of Civil Rights and Civil Liberties.
6. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Component and/or awarding office.

The United States has the right to seek judicial enforcement of these obligations.

Article XXXVII - Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired under this award by the recipient or its sub-recipients is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, you must request instructions from DHS/FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. § 200.313.

Article XXXVIII - Prior Approval for Modification of Approved Budget

Before making any change to the DHS/FEMA approved budget for this award, you must request prior written approval from DHS/FEMA where required by 2 C.F.R. § 200.308. For awards with an approved budget greater than $150,000, you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from DHS/FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget DHS/ FEMA last approved. You must report any deviations from your DHS/FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

Article XXXIX - Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK-GMD@dhs.gov if you have any questions.

FFATA FORM

Subrecipient Agency: City of Everett Office of Emergency Management	
Grant and Year: SHSP15	**Agreement Number:** E16-053-1

Completed by:	Brent Stainer	Director	(425) 257-8109
	Name	*Title*	*Telephone*

Date Completed: 10/18/2016

STEP 1				
Is your grant agreement less than $25,000?	YES ✓	STOP, no further analysis needed, GO to Step 6	NO ☐	GO to Step 2
STEP 2				
In your preceding fiscal year, did your organization receive 80% or more of its annual gross revenues from federal funding?	YES ☐	GO to STEP 3	NO ☐	STOP, no further analysis needed, GO to Step 6
STEP 3				
In your preceding fiscal year, did your organization receive $25,000,000 or more in federal funding?	YES ☐	GO to STEP 4	NO ☐	STOP, no further analysis needed, GO to Step 6
STEP 4				
Does the public have access to information about the total compensation* of senior executives in your organization?	YES ☐	STOP, no further analysis needed, GO to step 6	NO ☐	GO to STEP 5

STEP 5	
Executive #1	Name:
	Total Compensation amount: $
Executive #2	Name:
	Total Compensation amount: $
Executive #3	Name:
	Total Compensation amount: $
Executive #4	Name:
	Total Compensation amount: $
Executive #5	Name:
	Total Compensation amount: $

STEP 6

If your organization does not meet these criteria, specifically identify below **each** criteria that is not met for your organization: For Example: "Our organization received less than $25,000."

Our grant agreement is less than $25,000.

Signature: _____ **Date:** _____

* Total compensation refers to:

- Salary and bonuses
- Awards of stock, stock options, and stock appreciation rights
- Other compensation including, but not limited to, severance and termination payments
- Life insurance value paid on behalf of the employee

Additional Resources:
http://www.whitehouse.gov/omb/open
http://www.hrsa.gov/grants/ffata.html
http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf
http://www.grants.gov/

Washington Military Department Contract Number:_____

Debarment, Suspension, Ineligibility or Voluntary Exclusion Certification Form

NAME City of Everett Office of Emergency Management		Doing business as (DBA) same	
ADDRESS 2801 Oakes Avenue Everett, WA 98201	**Applicable Procurement or Solicitation #, if any:**	WA Uniform Business Identifier (UBI) 313-009-341	Federal Employer Tax Identification #: 91-6001248
This certification is submitted as part of a request to contract.			

Instructions For Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

READ CAREFULLY BEFORE SIGNING THE CERTIFICATION. Federal regulations require contractors and bidders to sign and abide by the terms of this certification, without modification, in order to participate in certain transactions directly or indirectly involving federal funds.

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the department, institution or office to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable CFR, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under applicable CFR, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business activity.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under applicable CFR, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

The prospective lower tier participant certifies, by submission of this proposal or contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this form.

Bidder or Contractor Signature: _____ Date: _____

Print Name and Title: Ray Stephanson, Mayor, City of Everett

and re-entry required by both WMD and your organization. It will also reduce the potential of inconsistent or inaccurate data entry.

2. Your organization must have a Data Universal Numbering System (DUNS) number obtained from the firm Dun and Bradstreet (D&B) (www.dnb.com). A DUNS number provides a method to verify data about your organization. D&B is responsible for maintaining unique identifiers and organizational linkages on behalf of the Federal Government for organizations receiving Federal assistance.

E. The WMD, as the prime awardee, is required by FFATA to report names and total compensation of the five (5) most highly compensated officers of your organization (as the subawardee) if:

1. Your organization (the subawardee), in the preceding fiscal year, received 80 percent or more of its annual gross revenues from Federal awards and $25,000,000 or more in annual gross revenues from Federal awards; and

2. The public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.

"Total compensation" for purposes of this requirement generally means the cash and non-cash value earned by the executive during the past fiscal year and includes salary and bonus; awards of stock, stock options and stock appreciation rights; and other compensation such as severance and termination payments, and value of life insurance paid on behalf of the employee, and as otherwise provided by FFATA and applicable OMB guidance.

F. If (1) in the preceding fiscal year your organization received 80 percent or more of its annual gross revenues from Federal awards and $25,000,000 or more in annual gross revenues from Federal awards, and (2) the public does not have access to this information about the compensation of the senior executives of your organization through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986, insert the names and total compensation for the five most highly compensated officers of your organization as identified in Step 5 of the FFATA Form.

Form **W-9**
(Rev. December 2014)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
City of Everett

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification; check only one of the following seven boxes:
☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate
☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶
Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.
☑ Other (see instructions) ▶ Local Government

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
Exempt payee code (if any)
Exemption from FATCA reporting code (if any)
(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.)
2930 Wetmore Avenue

Requester's name and address (optional)
Snohomish County DEM
720 80th St. SW, Building A
Everett, WA 98203-6217

6 City, state, and ZIP code
Everett, WA 98201

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number
☐☐☐ - ☐☐ - ☐☐☐☐

or

Employer identification number
9 1 - 6 0 0 1 2 4 8

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here Signature of U.S. person ▶ Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at *www.irs.gov/fw9*.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note. ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Amendment No.2 to the Professional Services Agreement with Tetra Tech, Inc. for construction engineering support for the Water Filtration Plant Programmed Logic Controllers Replacement Project

	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	November 2, 2016

Initialed by:
Department Head
CAA
Council President

Location	Preceding Action	Attachments	Department(s) Approval
6133 Lake Chaplain Road, Sultan, WA	08/06/12 Professional Services Agreement 12/10/14 Amendment No.1	Amendment No.2	Public Works

Amount Budgeted	$1,100,000	
Expenditure Required	$166,770	Account Number(s): UP 3361
Budget Remaining	$324,393	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Additional time and funding is required for Tetra Tech, Inc. to complete construction support for the Water Filtration Plant Programmed Logic Controllers Replacement Project. The current Professional Services Agreement expires December 31st, 2016. This amendment will extend construction support services through December 31st, 2018.

A breakdown of the contract amount is as follows:

Original Contract Amount	$608,837
Amendment No.1	$166,770
Revised Contract Amount	$775,607

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign Amendment No.2 to the Professional Services Agreement with Tetra Tech, Inc. for construction engineering support for the Water Filtration Plant Programmed Logic Controllers Replacement Project in the amount of $166,770.

`AMENDMENT NO. 2
PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF EVERETT
AND TETRA TECH INC.

This Amendment No. 2 is dated for reference purposes September 30th, 2016. It is by and between the City of Everett, a municipal corporation under the laws of the State of Washington ("City") and Tetra Tech Inc. ("Service Provider").

RECITALS

A. The City and Service Provider are parties to the Professional Services Agreement dated August 6th, 2012 (the "Agreement").

B. The City and the Service Provider desire to amend the Agreement for the purpose of adding engineering design and construction support services for the Water Filter Plant replacement.

AGREEMENT

The City and Service Provider agree as follows:

1. The Agreement is modified so that time of beginning and completion are as follows:

   Time of Beginning and Completion of Performance: This Agreement shall commence as of the date of execution of this Agreement and shall be completed by December 31st, 2018.

2. The Agreement is modified so that total compensation, including all services and expenses, shall not exceed Seven Hundred Seventy Five Thousand, six hundred seven dollars ($775,607).

3. The Work is modified to add the Work shown on Exhibit A1 and B1 to this Amendment.

4. Regardless of the date(s) on which this Amendment is signed by the parties, the parties agree that the Agreement has been continuously in effect since August 6th, 2012.

5. All provisions in the Agreement shall remain in effect except as expressly modified by this Amendment.

CITY OF EVERETT

By:_____
Ray Stephanson, Mayor

_____
Date

ATTEST

_____
Sharon Fuller, City Clerk

Date:_____

TETRA TECH, INC
19803 North Creek Parkway
Bothel, WA 98011

By: [signature]
Typed/Printed Name: KEVIN J. DOUR
Position/Office: DIRECTOR

10/5/16
Date

APPROVED AS TO FORM

_____
James D. Iles, City Attorny

Date:_____

EXHIBIT A1

SCOPE OF WORK

To maintain system operation, to satisfy newly developed buy-off protocols for the PLC replacement work, and to further enhance and support the networking and computer systems; Tetra Tech has been requested to provide this Proposal to perform additional work beyond the original Scope of work in order to complete the project. This Proposal is offered to obtain fair and reasonable compensation for these additional efforts.

Additional scope items for Everett WFP PLC Replacement Project:

TASK 11 Additional meetings:

We anticipate the need for additional on-site weekly meetings in order to more fully coordinate with the contractor and plant staff. These meetings are at either the Contractor's place of business in Everett, or the WFP. Based on current meeting frequency, we anticipate a total of 56 additional meetings through the conclusion of the project.

TASK 12 Documentation of Program Comparisons

Includes additional effort beyond the basic scope of work to perform Line-by-Line comparison of the AB programs migrated from distributed control panels to the centralized AB Master PLC program and develop a technical memo indicating differences and other findings. These original AB PLC routines were developed outside of Contracted services. This included line-by-line comparison for PLC programming in the following Phase 1 areas: Hypochlorite, Flocculation, Chemical Feed, Backwash Pump Station, Water Quality, Fluoride, Portal 4, Soda Ash, Recovered Water, Finished water pump station 1, and TI Master MCP. Detailed efforts included:

- Visually compare side-by-side verification that all routines and logic rungs are properly migrated from distributed PLCs and that they are fully represented within the master PLC logic.
- Ensure that routines and system Tags avoid potential naming conflicts due to consolidation
- Verify scaling, timer preset values, etc. are not affected by the consolidation
- Compare before and after ladder logic rungs within applicable subroutines observing that "local" addresses are updated to corresponding remote addresses where used. Also, observe that aliases to local and remote addresses within the global tag list maintains rack, slot and channel positions.
- Extract .CSV files for all tags within the old and new PLCs, obtain the DB2 Data Block file from Wonderware® and develop a comparison worksheet for each unit process area. Comparisons will use VLOOKUP within MS Excel to ensure that tags present within the original programs are also present within the

migrated master program, will present corresponding Wonderware® tags, and will highlight all tags between the PLCs that no longer match.

TASK 13 PLC Program Documentation

Additional reverse-engineering effort required to resolve missing or otherwise inaccurate legacy documentation (Tag and ladder rung descriptions) within the original TI 545 alternate backwash program. Efforts include:

- Program reverse Engineering efforts to determine program functionality for the Alternate Backwash Program.
- Develop coordinated timing diagrams for cascaded timers which do not have functional descriptions
- Trace down individual contacts which have missing or otherwise inaccurate tag name descriptions (number of tags could be in excess of 100 ea). Develop new descriptions for contacts and rungs which are lacking this information.

TASK 14 Additional Start-up and Commissioning Assistance

Validation efforts beyond basic start-up and commissioning assistance estimated in the base Contract. Estimated efforts within base contract Proposals included minimal effort to assist the Contractor during their startup efforts. Detailed Commissioning and documentation were not anticipated. Additional efforts for this task include the following:

- Provide services with on-site Tetra Tech personnel to implement field observation and detailed documentation for validation / sign-off related to I/O tag checkout. I/O Tags are verified functionally from the field instruments to the PLC and from the PLC to the SCADA HMI system.
- Provide services with on-site Tetra Tech personnel to implement field observation and documentation for validation / sign-off related to functional system-level testing of automated processes, interlocks and equipment. Functionality to be verified for applicable modes of operation including local manual, remote manual and automatic.

TASK 15 Troubleshoot and Resolve Network incompatibilities

Troubleshoot and resolve existing N-Tron Switch issues which are causing a "data-storm" instability effect within the network.

- Troubleshooting the network issues; it is assumed based on current evidence that incompatible firmware versions and outdated existing hardware are destabilizing the network any time the redundant network ring is fully closed.
- Quality Controls Company (QCC) working under a separate Contract with Seahurst Electric will obtain updated firmware for N-tron Switches.
- QCC working under a separate Contract with Seahurst Electric will implement corrective efforts to include flashing firmware on several switches.

- QCC working under separate Contract with Seahurst Electric will upgrade the existing N-Tron 9000 switches to N-Tron 7900 series switches so their network health can be directly monitored by SCADA and N-view software. Hardware components required for upgrade will be procured directly by the COE plant Personnel.
- It was also found that the AOI's implemented within the Master PLC program and used to monitor the network parameters, causes excessive network traffic and unacceptable system latency. The AOI approach will be abandoned, and an alternative monitoring scheme using Simple Network Management Protocol (SNMP) will be developed in conjunction with an N-View OPC for data collection and display on the existing SCADA system.

TASK 16 Filter Operation Documents

Develop additional documentation for filters and their operation. These documents will be made available to City Personnel for their use and/or incorporated into the plant master drawing set:

- Develop Control strategies for each filter mode of operation in greater detail than per the original proposal. Document to include a detailed description of each backwash step, event and transition.
- Develop P&ID drawing for typical filter as no P&ID existed to-date
- Develop two separate Filter State Diagrams for filter automatic backwash sequences (Basic and Alternate) to assist in functional testing procedures

Task 17 Additional Wonderware Support

Additional Wondware support development beyond simple coordination assumed for the original Proposal, Includes:

- Working with on-site Staff to fine-tune Filter Console #4 application program and guide them through the process of replicating and adapting this template to additional consoles 1 through 3.

Task 18 Additional Construction Coordination

Includes additional planning and on-site coordination with the Contractor for maintaining facility in operation while removing consoles (TI RIO Trunk, BWFE temporary connection, temporary reconnection for Air Scour system). Assist Contractor in identifying conductors, connections and equipment interfaces critical to maintaining functional use. Assume 6 site visits at 4 hours plus supervisor time in the office.

Also includes efforts to develop and implement temporary measures within Wonderware and the temporary filter PLC to maintain continuous operations for shared system resources and events. Additionally these measures helped facilitate effective communications between the existing TI PLC, master AB PLC, temporary filter PLC and multiple Wonderware applications.

Examples of shared resources and events which needed additional provisions included consolidating master flow rates between existing and new systems, bi-directional reporting of backwash events for filters running on different systems, interface with backwash pumping and flow control systems, etc.

TASK 19 Spare I/O Implementation

Efforts to field install and configure (retrofit) four new Remote I/O cards within remote I/O racks, and update the redundant Master PLC Processor to recognize and configure the new system inputs / outputs.

TASK 20 Server Computer Hot Backup Setup and Software Installation

Includes efforts to install software, set up and configure the secondary Stratus FTServer computer equipment, to support automatic fail-over of HMI applications present at remote terminals. This solution will leverage ACP ThinManager auto failover capabilities. Specific efforts for the secondary Stratus FTServer includes:

- Deploy a backup Domain Controller Virtual Machine (VM) on the secondary FTServer
- Create and configure virtual machines using Microsoft Hyper-V. The two Hyper-V licenses are included with the Server 2012 R2 Operating System, and will be utilized for this purpose.
- Set up on a second VM for server roles such as for Terminal Services, Application License Server, and Remote Desktop Services License Server "Client Access Licenses" (CALs.)
- Install and configure ACP ThinManager software and associated Remote Desktop Services (RDS) Host Servers for use with remote thin client machines in the Finished Water Pump Station 2, and the four replacement filter consoles.
- Load and Deploy developed Wonderware Intouch applications on the terminal services VM for five SCADA HMI thin clients in the FWPS2 and at the four Filter Consoles.
- Configure ACP ThinManager within Primary / Secondary Servers, and on Remote thin client terminals, for automatic fail-over operation.

TASK 21 Stratus Server Uptime Layer Monitoring

Off-site monitoring of the FTServer uptime layer will be provided via a Modem connection over telephone lease-line. Tetra Tech will provide services to facilitate this monitoring connection.

- Coordination of required connections to the FTServers.
- Purchase and install external data/fax modem C719 (Multitech ZBA Series) if required.
- Coordinate and implement modem configurations and FTServer remote monitoring service activations.

Task 22 As-needed Engineering Service

- a 5% Contingency Allowance for as-needed engineering and programming services is added herein to facilitate immediate corrections to any unforeseen conditions which are necessary to maintain plant operations and remedy various shortcomings to legacy programming during construction. Allowance will only be used upon explicit and specifically authorized work directive issued by COE Project Management.
- A sub-task has been developed for resolving Hypo feeder scaling issues and issues related to HMI displays within the Hypo area. QCC will be retained as a sub-consultant to Tetra Tech to perform these activities.

EXHIBIT B1
COMPENSATION

■ ALTERNATE A [HOURLY RATE UP TO A MAXIMUM AMOUNT]

The City shall pay the Service Provider a sum equal to the amount of hours actually worked multiplied by the rate identified herein for the staff performing the Work, subject to the maximum stated in ¶4(D) of this Agreement. For work performed in 2013 and beyond the rate increase is 4% per year.

Name	Responsibility	Rate
Licensed Electrician	Primary	$110.88/hr
Licensed Electrician	Secondary	$85.47/hr
Principal Engineer	Supervisory	$246.64/hr
Senior Engineer	Project Manager	$202.37/hr
Engineer	Field Investigation	$158.48
CAD/Admin	Drafting & Administration	$109.62

☐ ALTERNATE B [LUMP SUM]

The City shall pay Service Provider dollars ($) upon the completion of the Work, subject to the maximum stated in ¶4(D) of this Agreement.

■ ALTERNATE C [PROGRESS PAYMENTS]

The City shall pay the Service Provider the following amounts upon the completion of the following tasks, subject to the maximum stated in ¶4(D) of the Agreement:

Task	Amount Paid upon Completion of Task
Task 0	$47,430
Task 1.A	$11,244
Task 1.B	$8,683
Task 1.C	$8,981
Task 2	$20,102
Task 3.1.A	$25,504
Task 3.1.B	$21,301
Task 3.1.C	$18,388
Task 3.2.A	$17,562
Task 3.2.B	$15,882
Task 3.2.C	$15,652
Task 3.3.A	$4,709
Task 3.3.B	$3,931

Task	Amount Paid upon Completion of Task
Task 3.3.C	$6,868
Task 4.A	$3,596
Task 4.B	$3,671
Task 4.C	$3,292
Task 5	$200,000
Task 6	$60,000
Task 7.A	$3,443
Task 7.B	$3,598
Task 8	$10,000
Task 9	$90,000
Task 10	$5,000
Task 11	$45,376
Task 12	$16,545

ALTERNATE C [PROGRESS PAYMENTS] CONTINUED

Task	Amount Paid upon Completion of Task
Task 13	$8,272
Task 14	$22,086
Task 15	$2,782
Task 16	$5,420
Task 17	$10,105
Task 18	$8,878
Task 19	$1,358
Task 20	$13,034
Task 21	$8,965
Task 22	$23,949

Task	Amount Paid upon Completion of Task

☐ ALTERNATE D [BASE REGISTRATION]

The city shall pay the Service Provider such amounts and in such manner as follows:
Fee for service shall be percent % of the base registration fees collected by the City.
Additional fees and/or surcharges levied by the City will be retained 100% by the City.
Payments shall be made as stated in Exhibit A – Scope of Work. The base registration fee is listed in Exhibit A – Scope of Work. Compensation shall not exceed dollars ($).