

ENVIRONMENTAL, GEOTECHNICAL, AND SPECIAL INSPECTIONS ENGINEERING SERVICES AGREEMENT

This Environmental, Geotechnical and Special Inspections Engineering Services Agreement (“Agreement”) is entered into by and between **Budinger & Associates, Inc.** (“Consultant”) and the **Spokane Transit Authority** (“STA”), a State of Washington municipal corporation; each individually referred to as “Party” and collectively referred to as “Parties”.

WHEREAS, STA requires environmental, geotechnical and special inspections engineering services and related professional services (the “Work”) to complete various projects, including but not limited to, infrastructure and new facilities, facility improvement, alteration, or repair, and environmental impact, monitoring and remediation (individually or collectively, the “Project”); and

WHEREAS, the Consultant desires to perform the Work in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the Consultant has represented, and by entering into this Agreement now represents, the Consultant is in full compliance with the statutes of the State of Washington for licensing and registration of professional engineers and architects, and that all personnel to be assigned to the work required under this Agreement are fully qualified to perform the work to which they will be assigned, in a competent and professional manner.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, the Parties agree as follows:

1. SCOPE OF WORK

Unless stated otherwise in this Agreement, the Consultant shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of Work as set forth in the Scope of Work (“SOW”), attached hereto as Exhibit A. STA has relied upon the qualifications of Consultant in entering into this Agreement. By executing this Agreement, Consultant represents it possesses the ability, skill and resources necessary to perform the Work and is familiar with all applicable current laws, rules and regulations which reasonably relate to the SOW. No substitutions of Consultant key staff, project managers and/or task leads shall be made without the prior written consent of STA.

2. WORK AUTHORIZATION

A. Work Orders. Work authorized under this Agreement shall be assigned through a “Work Order” executed by the Parties for each task, or closely related set of tasks, in the form attached hereto as Exhibit B. Each Work Order shall include a summary description of the task(s) to be performed by the Consultant, which shall be generally consistent with the SOW, and an itemized cost proposal with a corresponding Not-to-Exceed (“NTE”) expenditure limit.

Work authorized under each Work Order shall begin upon mutual execution by the Parties, or as specified in the Work Order, whichever occurs later, and conclude by the "Completion Date" specified in the Work Order. STA review time, if required, shall be measured from the date information is received by STA until the date that comments are submitted to the Consultant by STA, or their designee. The Completion Date shall not be extended because of any unwarranted delays attributable to the Consultant, but may be extended by STA in the event of a delay attributable to Section 15 herein.

- (1) Amendments. In the event Work authorized via Work Order requires modification for any reason, the Parties shall execute a "Work Order Amendment" in the form attached hereto as Exhibit C.
- B. Suspension, Delay or Interruption of Work. STA may suspend, delay or interrupt the services of the Consultant for the convenience of STA. In the event of such suspension, delay or interruption, an equitable adjustment in the Project's schedule, corresponding Completion Date, commitment and cost of the Consultant's personnel and subconsultants, and/or the Consultant's compensation may be made if warranted.
- C. Changes in Work. Should STA find it desirable for its own purposes to have previously approved and completed Work, or parts thereof, revised, other than minor revisions within the SOW, the Consultant shall make such revisions, if requested and as directed by STA in writing. This work shall be considered "Extra Work" and Consultant shall be compensated for Extra Work as provided for in Section 5 herein.

All Extra Work shall be requested by Consultant as a modification to the SOW, Work Order or both and authorized through written amendment thereto prior to commencement of the Extra Work.

- D. Items Furnished to Consultant. STA shall furnish the Consultant with all maps, drawings (of any and all forms, file types or format), calculations, reports and other information on file which relate to the Project. The Consultant shall reasonably rely upon the timeliness, accuracy and completeness of the information provided by STA.

3. CONSULTANT RESPONSIBILITIES

- A. Standard of Care. The standard of care applicable to the Consultant's services will be the degree of skill and diligence normally employed by professional engineers and architects or consultants engaged in the same profession and performing the same or similar services at the time such services are performed. The Consultant will re-perform any services not meeting this standard without additional compensation.
- B. Endorsement of Work. The Consultant shall place Consultant's endorsement on all reports, plans, specifications, estimates or any other architectural and engineering data furnished by Consultant. All studies, reports, papers, surveys, plans, specifications and opinions of cost shall be reviewed to determine their adequacy by a senior reviewer of the Consultant. The Consultant will be held responsible for the technical accuracy of the Work, consistent with Section 3.A of this Agreement, and STA shall not be responsible for discovering deficiencies therein. Consultant shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in STA furnished information.

- C. Corrections to Work. The Consultant shall make such revisions in the Work included in this Agreement as are necessary to correct errors or omissions appearing therein, when required to do so by STA, or the respective profession's Standards of Care, without additional compensation.
- D. Supporting Documentation/Information. During execution of the Work, the Consultant shall provide all supporting documentation and/or information as may be requested by STA.
- E. Subsurface Investigations. In soils, foundation, groundwater, utilities and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, explorations and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the Consultant, to the extent that Consultant has exercised the applicable and appropriate standard of professional care and judgment in such investigations.
- F. Opinions of Cost, Financial Considerations and Schedules. In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, the Consultant has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate Project cost or schedules. Therefore, the Consultant makes no warranty that STA's actual Project costs, financial aspects, economic feasibility or schedules will not vary from the Consultant's opinions, analyses, projections or estimates.
- G. Minor Changes. The Consultant shall make such minor changes, amendments or revisions in the details of the Work as may be required by STA, provided that they are within the SOW and are requested prior to final review and acceptance of Work by STA. Such minor changes, amendments or revisions shall not constitute Extra Work as defined in Section 2.C of this Agreement. When alternates are being considered, STA shall have the right of selection.
- H. Work Product; Reuse of Project Documents. All originals and copies of work product, including plans, sketches, layouts, designs, drawings, specifications, documents, records, files, data, media, material and other work products of the Consultant shall belong to STA upon delivery. The Consultant shall make such work product available to STA and shall deliver all needed or contracted for work product upon STA's request. At the expiration or termination of this Agreement, all originals and copies of any such work product shall be delivered to STA. Reuse by STA or by others acting through or on behalf of STA of any such work product based on facts or circumstances not contemplated in the original Work, without the written permission of the Consultant, will be at STA's sole risk.
- I. Items Furnished by Consultant. Documents, exhibits or other presentations for the Work shall be furnished by Consultant to STA upon completion of Work. All such material shall become and remain the property of STA and may be used by STA without restriction other than as described in Section 3.H, *Reuse of Project Documents*.
- J. Subconsultants & Subcontractors.
- (1) Architectural & Engineering Subconsultant Approval. In its performance of Work, Consultant shall only use architectural and engineering subconsultants, as defined by 40 USC § 1102(2)

(“A&E Subconsultants”), identified in its original proposal for the performance of Work. Any change in A&E Subconsultants, including the addition of new A&E Subconsultants, shall be approved in writing by STA prior to implementation by Consultant.

- (2) Licensing & Registration. Consultant shall require and ensure A&E Subconsultants, of any tier, are in full compliance with the statutes of the State of Washington for licensing and registration of professional engineers and architects, or as applicable to the scope of work provided by the subconsultant(s), and that all personnel to be assigned to the work required under this Agreement are fully qualified to perform the work to which they will be assigned, in a competent and professional manner.
- (3) Approved Indirect Cost Rate. In accordance with the “Brooks Act”, 40 USC §§ 1101-1104, Consultant shall ensure applicable A&E Subconsultants of every tier submit to Consultant in writing an audited Indirect Cost Rate or Safe Harbor Indirect Cost Rate approved by the Washington State Department of Transportation (“WSDOT”). Consultant shall provide STA a copy of subconsultants’ Indirect Cost Rate approved by WSDOT prior to commencing any work with A&E Subconsultants.
- (4) Subconsultant & Subcontractor Expenses. Subconsultant and subcontractor expenses incurred by the Consultant for its performance of Work shall be invoiced without margin or markup.

4. TERM

The “Term” of this Agreement shall commence August 1, 2022, and conclude July 31, 2027, unless extended, at the sole discretion of STA, via written instrument in accordance with Section 21 herein.

5. COMPENSATION

- A. Total Compensation. Compensation due Consultant for the performance of Work shall be paid in accordance with the hourly direct salary, indirect cost and profit rates detailed in the *Compensation Schedule* attached hereto as Exhibit D and incorporated herein. Such payment shall be full compensation for Work performed or services rendered and for all labor, materials, supplies and incidentals necessary to complete the Work.
- B. Adjustments to Compensation. Hourly direct salary and indirect cost rates may be revised annually on the “Anniversary Date” of this Agreement, provided the Consultant submits to STA a written request for adjustment to compensation at least sixty (60) days prior to the Anniversary Date in accordance with Section 8 herein.
 - (1) Hourly Rates. Adjustment to hourly direct salary rates shall be based upon the annual non-seasonally adjusted percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the calendar month three (3) months prior to the Agreement Anniversary Date, not to exceed five percent (5%).
 - (2) Indirect Cost Rate. Adjustment to Consultant’s indirect cost rate shall be based upon the submission of the Consultant’s WSDOT-approved audited Indirect Cost Rate(s) or Safe Harbor Indirect Cost Rate.
 - (3) Profit Rate. The Consultant’s Profit rate shall remain fixed for the Term of this Agreement.

- C. Travel Expenses. Actual travel expenses pre-authorized by STA in writing and incurred by the Consultant shall be reimbursed in accordance with the *Compensation Schedule* attached hereto as Exhibit D.
- D. Taxes. If applicable, sales tax on this Agreement as determined by the Washington State Department of Revenue will be added to the amounts due Consultant and the Consultant will be responsible for making payment of the sales tax received to the State of Washington. All other taxes are the sole responsibility of the Consultant.

6. INVOICING

Consultant shall submit a single monthly invoice, per Work Order, cumulative of all Work disciplines, to STA's representative in Section 9 by the fifteenth (15th) of the month for the Work completed during the immediately preceding month. Each invoice shall be accompanied by a spreadsheet showing a list of all tasks by Work Order, their original budget amount, costs incurred through the last day of the invoice period, estimated remaining costs, and estimated total costs through completion of Work. A narrative or remark column shall be included and any comments, problems or potential causes for delay shall be noted. Subconsultant expenses, if any, shall be individually identified and accompanied by the subconsultant's invoice(s). Travel expenses, not including per diem charges, shall be substantiated by original receipts for all such expenses. Consultant shall attach any and all documentation required to substantiate all charges included on the invoice.

7. PAYMENT

- A. Payment. The Consultant shall be paid, upon the approval of correct and complete invoices submitted in accordance with Section 6, subject to the following:
- (1) Payment will be made within thirty (30) calendar days following the date of receipt by STA of the approved Consultant invoice, less deductions, if any. In the event STA disputes or contests the Consultant's invoice, or a portion thereof, only that portion so contested shall be withheld, and the undisputed portion shall be paid in accordance with the payment provision outlined herein. STA shall exercise reasonableness in contesting any bill or portion thereof.
 - (2) Final payment of any balance due the Consultant of the ultimate gross amount earned will be made within thirty (30) days following STA's ascertainment and verification of satisfactory completion of Work and the receipt of all deliverables which are to be furnished by Consultant under this Agreement.
 - (3) Payment for Extra Work shall be paid in accordance with Sections 6 and 7 herein, unless separate or special terms are agreed to by the Parties in writing at the time Extra Work is authorized.
 - (4) Each payment by STA shall constitute full payment for labor, materials, supplies, equipment, incidentals and travel expenses through the last day of the invoice period. Consultant's acceptance of payment constitutes a waiver of any claims for payment not including the partial payment request.
- B. Payment Does Not Imply Acceptance of Work. The granting of any progress payment or payments by STA, or the receipt thereof by the Consultant, shall not constitute in any sense acceptance of the Work or of any portion thereof, and shall in no way lessen the liability of the Consultant to replace

Work or material which does not conform to this Agreement, though the character of such work or material may not have been apparent or detected at the time such payment was made.

- C. Prompt Payment of Subconsultants. The Consultant is required to make payment to subconsultants within thirty (30) days from the date of receipt of each payment submitted to Consultant by STA for satisfactorily completed subconsultant work, whether such payment is a progress or final payment. If payment disputes arise between the Consultant and subconsultant, such disputes shall be resolved promptly through mediation or arbitration in order to prevent injury to small business subconsultants. The Consultant shall specify in its subcontract agreement with any subconsultant what dispute resolution method will be used. In addition, the Consultant will not be paid for subconsultant work unless the Consultant can show that a prompt payment method for subconsultants is in place. Consultant shall be required to provide copies of its subconsultant agreements to STA showing inclusion of these provisions. STA may withhold the applicable sum due a subconsultant from Consultant’s payment for non-compliance with this section, until such time STA, in its sole discretion, determines Consultant is in compliance with this section.

8. NOTICES

All notices, requests, claims, demands and related communications shall be in writing and shall be signed by a person duly authorized to provide such notice. Notices permitted or requested to be given hereunder shall be deemed sufficient if given (1) in person; (2) by regular mail, postage prepaid; (3) by registered or certified mail, postage prepaid, return receipt requested; or (4) by email, addressed to the respective contact of the Parties as set forth below, or as may be revised by like notice from time to time.

All notices shall be deemed to have been duly given (1) when delivered in person; (2) three (3) business days after the date of mailing by regular mail, postage prepaid; (3) upon receipt after dispatch by registered or certified mail, postage prepaid; or (4) upon confirmation of a read receipt when transmitted by email.

Consultant

Spokane Transit Authority

Galen Ribellia
 Business Development Director
 Budinger & Associates, Inc.
 1101 N Fancher Rd
 Spokane Valley, WA 99212
 E: gribellia@budingerinc.com
 P: (509) 535-8841

Contracts Compliance Specialist
 Spokane Transit Authority
 1230 W Boone Ave
 Spokane, WA 99201
 E: contracts@spokanetransit.com
 P: (509) 325-6000

9. COMMUNICATIONS

Any administrative or operational communications required by the Parties under this Agreement shall be directed to the Parties’ designated representatives below:

Consultant**Spokane Transit Authority**

Galen Ribellia
 Business Development Director
 Budinger & Associates, Inc.
 1101 N Fancher Rd
 Spokane Valley, WA 99212
 E: gribellia@budingerinc.com
 P: (509) 535-8841

Jessica Charlton
 Senior Project Manager
 Spokane Transit Authority
 1230 W Boone Ave
 Spokane, WA 99201
 E: jcharlton@spokanetransit.com
 P: (509) 325-6049

Communications to be given hereunder shall be deemed sufficient if given (1) in person; (2) by mail, postage prepaid; or (3) by email, addressed to the designated representative of the Parties as set forth above, or as may be revised by written notice in accordance with Section 8 of this Agreement.

10. INSURANCE

A. Minimum Scope of Insurance. For the duration of this Agreement, the Consultant shall procure and maintain, at its sole expense, commercial insurance against claims for injuries to persons or damage to property that may arise from or in connection with the Consultant's own work, including the work of the Consultant's directors, agents, representatives, employees, subcontractors or subconsultants as required herein:

- (1) General Liability. General Liability insurance with coverage at least as broad as Insurance Services Office ("ISO") form CG 00 01, on an occurrence basis with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate per project. Coverage shall include, but is not limited to, bodily injury, personal injury, advertising liability, blanket contractual liability, products and completed operations, and property damage.
- (2) Automobile Liability. Automobile Liability insurance with coverage at least as broad as ISO form CA 00 01, including coverage for any owned, hired, non-owned or rented automobile with minimum limits of \$1,000,000 combined single limit each accident.
- (3) Professional Liability. Professional Liability insurance with minimum limits of \$3,000,000 per occurrence or claim and \$3,000,000 in the aggregate. Any policy inception date, continuity date or retroactive date must be before the effective date of this Agreement. Coverage shall be maintained, or the policy shall include an "extended reporting period", for a minimum of three (3) years following STA's acceptance of the Work, expiration of the Agreement, or expiration of any Work Order(s), whichever occurs later.
- (4) Umbrella Liability. Umbrella Liability insurance with coverage at least as broad as the commercial general liability and automobile liability policies set forth above, with minimum limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Such policy shall include the following terms & conditions:
 - (a) A drop-down feature requiring the policy to respond if any primary insurance that would have otherwise applied proves to be uncollectible in whole or in part for any reason;
 - (b) Pay on behalf of wording as opposed to reimbursement;
 - (c) Concurrency of effective dates with primary policies;

- (d) Policies shall “follow form” to the underlying primary policies; and
 - (e) Insureds under primary policies shall also be insureds under the Umbrella policy with no additional restrictions.
- (5) Workers’ Compensation. Statutory requirements for the Contractor’s state of residency. When Work is performed in the State of Washington, Workers’ Compensation coverage as required by Chapter 51 of the Revised Code of Washington.
- B. Insurance Rating. Insurance is to be underwritten by insurers licensed to provide insurance within the State of Washington with a current A.M. Best rating of not less than A:VII.
 - C. Additional Insured. Consultant’s General Liability, Automobile Liability and Umbrella Liability policies shall be endorsed using Insurance Services Office form GC 20 10 naming STA, its officials, officers, directors, employees and agents as additional insureds under such policies.
 - D. Deductible. Consultant is responsible for the payment of any deductible or approved self-insured retention that is required by any of Consultant’s insurance. If STA is required to contribute to the deductible or self-insured retentions under any of Consultant’s insurance policies, the Consultant shall reimburse STA the full amount of the deductible, self-insured retention, or both, contributed by STA. Consultant’s deductible for each insurance policy required herein shall be limited to no more than ten percent (10%) of the policy occurrence limit.
 - E. Self-Insured Retention. Any self-insured retentions must be declared to and approved by STA prior to execution of this Agreement. STA reserves the right to require that self-insured retentions be eliminated, lowered or replaced by a deductible. Self-insurance or self-insured retentions will not be considered to comply with these specifications unless approved in writing by STA prior to execution of this Agreement.
 - F. Primary & Noncontributory. It is the intent of this Agreement for the Consultant’s insurance to be considered primary and noncontributory in the event of a loss, damage or suit. STA’s own comprehensive general liability policy will be considered excess coverage in respect to STA. Additionally, the Consultant’s commercial general liability policy must provide cross-liability coverage as would be achieved under a standard ISO separation of insureds clause.
 - G. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against STA, its elected and appointed officers, agents, officials, employees and volunteers, or shall specifically allow Consultant, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against STA, and shall require similar written express waivers and insurance clauses from each of its subconsultants.
 - H. Verification of Coverage. Within five (5) business days of Agreement execution, or prior to the delivery of services hereunder, whichever occurs earlier, the Consultant shall furnish evidence of insurance in the form of a Certificate of Insurance, and associated amendatory endorsements, for coverages required herein. Should the term of this Agreement exceed the term of any of Contractor’s insurance policies, the Contractor shall submit to STA a Certificate of Insurance evidencing continuation of such policies prior to said policies’ expiration. STA reserves the right to receive a certified and complete copy of all of the Consultant’s insurance policies.

- I. Notice of Cancellation. The Consultant must provide written notification to STA for any cancellation, suspension or material change in Consultant's coverage at least thirty (30) days in advance of such cancellation, suspension or material change.
- J. Subconsultant Coverage. With the exception of Umbrella Liability coverage, the Consultant shall ensure and require its subconsultants of any tier have insurance coverage equal to, or greater than, the requisite coverages specified herein.
- K. Limit of Liability. STA's specification or approval of insurances and/or minimum amounts required herein shall not relieve or decrease the liability of the Consultant. Coverages and amounts are the minimum to be provided and are not limitations of liability under this Agreement, indemnification or applicable law provisions. The Consultant may, at its sole expense, procure and maintain additional coverage and/or greater amounts of coverage.
- L. Damages. If STA is damaged by the failure of the Consultant to maintain any of the above insurance or to so notify STA in accordance with the requirements herein, the Consultant shall bear all costs attributable thereto. STA may withhold payment pending receipt of all Certificates of Insurance. Failure to withhold payment shall not constitute a waiver of any requirement herein.
- M. Right of Enforcement. Failure on the part of the Consultant to maintain the insurance as required herein shall constitute a material breach of this Agreement, upon which STA may, after giving five (5) days written notice to the Consultant to correct the breach, immediately terminate this Agreement for cause, or at its discretion, but not its duty, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to STA on demand, or at the sole discretion of STA, offset against funds due the Consultant from STA.
- N. Insurance Coverage Term. Coverages shall be maintained without interruption from the date of execution of this Agreement until the date of final payment to Consultant, or termination of any coverage required to be maintained after final payment, whichever is later. Completed operations coverage shall remain in force for three (3) years after final acceptance of Work.
- O. Submittals. Any communication, submittal or notice required in this Section shall be submitted to coi@spokanetransit.com.

11. INDEMNIFICATION

To the maximum extent provided by law, the Consultant shall indemnify and hold STA, its officers, directors, agents, employees and volunteers harmless from any and all claims, demands, penalties, damages, losses, suits, including death, bodily injury or property damage, including attorneys' fees and court costs, arising out of or resulting from the acts, errors or omissions of the Consultant, its officers, directors, agents and employees in its performance under this Agreement, except for claims caused by the sole negligence of STA. In the event that any claims, investigations, demands, suits, actions or lawsuits arise out of any of the aforesaid acts, errors, or omissions, the Consultant shall assume all costs of defending such claims, suits, actions or lawsuits, including legal fees incurred by STA, any penalties imposed on STA or the Consultant, and all judgments that may be obtained against STA, or any of its officers, agents, or employees in such suits.

To the maximum extent provided by law, STA shall defend, indemnify and hold the Consultant, its officers, directors, agents and employees harmless from any and all claims, demands, penalties, damages, losses, suits, including death, bodily injury or property damage, including attorneys' fees and court costs, arising out of or resulting from the acts, errors or omissions of STA, its officers, directors,

agents and employees in its performance under this Agreement, except for claims caused by the sole negligence of the Consultant.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and STA, its officers, officials, employees and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under the Industrial Insurance Act, Title 51 RCW, for actions brought by it or its employees against STA for injuries in the performance of this Agreement. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

12. INDEPENDENT CAPACITY

- A. In performing Work hereunder, the Consultant, its employees, agents, and representatives, shall be acting as independent Consultants, and shall not be deemed or construed to be employees or agents of STA in any manner whatsoever. The Consultant shall not hold itself out as, nor claim to be, an officer or employee of STA by reason hereof, and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of STA. The Consultant shall be solely responsible for any claims for wages or compensation by the Consultant's employees, agents and representatives, and shall save and hold STA harmless therefrom.
- B. Employees. The employees or agents of each Party to this Agreement will continue to be employees or agents of that Party and will not be considered for any purpose to be employees or agents of any other Party.
- C. No Partnership and No Third-Party Beneficiaries. It is agreed by the Parties that this Agreement does not create a partnership or joint venture relationship between the Parties and does not benefit or create any rights in a third party.

13. DISPUTE RESOLUTION

The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by respective legal counsel, and that the terms and conditions of this Agreement shall not be construed against either Party on the basis of such Party's drafting of such terms and conditions. If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the Parties shall first pursue mediation using a mutually agreed mediator, the cost of which shall be divided equally. Any dispute not settled through mutual negotiation or mediation shall be decided in the Spokane County Superior Court, in accordance with the laws of the State of Washington and the prevailing party shall be entitled to an award of reasonable attorney fees. If the Parties mutually consent in writing, other forms of alternative dispute resolution may be utilized.

14. TERMINATION

- A. Convenience. STA may terminate this Agreement, in whole or in part, at any time and for any reason. Termination shall be effected by serving a Notice of Termination ("NOT") in accordance with Section 8 of this Agreement, setting forth the effective date of termination.
- B. Default, Breach or Cause. STA may terminate this Agreement for default, breach or cause in the event the Consultant fails to perform a material obligation hereunder, or fails to comply with any

provision of this Agreement. Termination shall be effected by serving a NOT in accordance with Section 8 of this Agreement, setting forth the manner in which the Consultant is in default or breach and the effective date of termination. The Consultant will only be compensated for the performance of Work delivered to and approved by STA in accordance with the manner of performance set forth in the SOW, subject to setoff for damages caused to STA. If it is later determined, in the sole discretion of STA, that the Consultant had an excusable reason for non-performance which is not the fault of, or beyond the control of, the Consultant, STA may permit the Consultant to continue the performance of Work under this Agreement, or treat the termination as a termination for convenience in accordance with Section 14.A.

- (1) Opportunity to Cure. STA, in its sole discretion, may allow the Consultant an appropriate period of time, as solely determined by STA, in which to cure the breach or default in its performance of Work. In such case, the NOT shall state the time period in which the breach or default shall be cured and the appropriate conditions to satisfy such opportunity to cure. If the Consultant fails to remedy to STA's satisfaction the breach or default within the stated time period of remedy, STA shall have the right to terminate this Agreement without further obligation to the Consultant. Any such termination for default shall not in any way operate to preclude STA from also pursuing all available legal remedies against the Consultant and its sureties for said breach or default.
 - (2) Waiver of Default or Breach. Waiver of any term, condition or covenant of this Agreement, or Consultant default or breach by STA shall not be deemed to be a waiver of any subsequent term, condition or covenant of this Agreement or Consultant default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such by amendment of this Agreement in accordance with Section 21.
- C. In the event this Agreement is terminated under any of its terms prior to the completion of Work, the original copies of all plans, prints, drawings, specifications, reports, studies, test results, inspection reports, agency approvals and field notes prepared by Consultant, and its subconsultants of any tier, through the date of termination shall become property of STA. Further, a final payment shall be made to the Consultant which results in a total amount paid to the Consultant equal to the percentage of the total Work completed, plus reimbursable expenses incurred to the date of termination. STA is authorized to offset or deduct from any sums due the Consultant any actual charges incurred by STA to the extent arising out of the default of the Consultant.
- D. Payment by STA for any part of the Work shall not constitute a waiver by STA of any remedies of any type it may have against the Consultant for any breach of this Agreement by the Consultant, or for failure of the Consultant to perform work required of it by STA. Forbearance of any rights under this Agreement will not constitute a waiver of the entitlement to exercise those rights with respect to any future act or omission by the Consultant.
- E. Consultant shall have the right to terminate this Agreement in the event of any material breach of this Agreement by STA by submitting a written Notice of Termination to STA. The effective date of termination shall not be less than ten (10) days following the date of the Notice of Termination. In the event of such termination, STA shall compensate Consultant for all services performed and reimbursable expenses incurred through the effective date of termination.

15. FORCE MAJEURE

In the event that any Party's obligations under this Agreement are substantially delayed, prevented or rendered impractical by fire, flood, riot, earthquake, civil commotion, war, strike, lockout, labor

disturbances, exposition, sabotage, accident or other casualty, weather event, pandemic, act of God, any law ordinance, rule or regulation which becomes effective after the date of this Agreement, measures of governmental authority including but not limited to any temporary law ordinance, health directive, rule, regulation, travel or movement restriction, or limitation on the size of gatherings implemented by the local health department, board, or officer in the jurisdiction where the event is to be held, the Washington State Department of Health, the Governor of the State of Washington, the Washington State Military Department, the United States Department of Health & Human Services, the United States Centers for Disease Control and Prevention or any other Local, State, or Federal Public Health Agency which adversely affects the ability of either party to perform its obligations under this Agreement, pandemics, viral or communicable disease outbreak, quarantine, or any other cause beyond the reasonable control of any Party, then the Parties shall be released from performance under this Agreement. The Parties hereby waive any claim for damages or compensation for such delay or failure to perform, other than obligations incurred up to the date of such force majeure.

16. CIVIL RIGHTS

- A. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d; Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102; Section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132; and Federal transit law at 49 USC § 5332, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, sexual orientation, gender identity, age or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity. The following equal employment opportunity requirements apply to this Agreement:
- (1) Race, Color, Creed, National Origin, Sex, Sexual Orientation, Gender Identity. In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal transit law at 49 USC § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Dept. of Labor (U.S. DOL) regulations, *Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor*, 41 CFR, Parts 60 *et seq.*, (which implement Executive Order No.11246, *Equal Employment Opportunity*, as amended by Executive Order No. 13672. *Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity.*, 42 USC § 2000e note), and with any applicable Federal statutes, executive orders, regulations and Federal policies that may in the future affect construction activities undertaken in the course of this project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, sexual orientation, gender identity or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
 - (2) Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623, and Federal transit law at 49 USC § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- (3) Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, *Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act*, 29 CFR, Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. The Consultant agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

17. COMPLIANCE WITH LAWS

Each Party to this Agreement shall comply with all applicable federal, state and local laws and regulations.

18. GOVERNING LAW & VENUE

This Agreement shall be governed by and construed according to the laws of the State of Washington. Nothing in this Agreement shall be construed as altering or diminishing the rights or responsibilities of the Parties as granted or imposed by state law. Any and all disputes concerning this Agreement must be resolved in the Superior Court of Spokane County, Washington. The Parties agree to exclusive personal jurisdiction, subject matter jurisdiction and the venue of this court.

19. INTERPRETATION

As a further condition of this Agreement, STA and the Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each Party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any Party. In the event that any Party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party all expenses which it may reasonably incur in taking such action, including attorneys' fees and costs, whether incurred in a court of law or otherwise.

20. ENTIRE AGREEMENT

This Agreement and its attachments constitute the entire Agreement between the Parties and supersedes all prior negotiations, representations and agreements between the Parties relating to the subject matter hereof.

21. MODIFICATION

This Agreement may be amended or modified only by written instrument signed by the Parties hereto.

22. SEVERABILITY

Should any provision of this Agreement be deemed invalid or inconsistent with any federal, state or local law or regulation, the remaining provisions shall continue in full force and effect. The Parties agree to immediately attempt to renegotiate such provision that is invalidated or superseded by such laws or regulations.

23. SUCCESSORS & ASSIGNS

This Agreement shall be binding on the Parties hereto. Neither Party may delegate the performance of any obligation hereunder to a third party without prior written approval from the other Party.

24. ANTI-KICKBACK

No officer or employee of the Spokane Transit Authority or the Consultant, having the power or duty to perform an official act or action related to this Agreement, shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

25. CONFLICT OF INTEREST

- A. No employee, officer or agent of STA shall participate in selection or in the award or administration of an agreement or contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
- (1) the employee, officer or agent;
 - (2) any member of his/her immediate family;
 - (3) his or her partner; or
 - (4) an organization which employs, or is about to employ, any employee, officer or agent of STA has a financial or other interest in the firm selected for award.
- B. Consultant agrees to notify STA of any potential conflicts of interest in Consultant's client base and will seek and obtain written consent from STA prior to providing services to third parties where a conflict of interest is apparent. If a conflict of interest arises in the course and scope of Consultant's performance of Work under this Agreement, Consultant agrees to resolve such conflict in favor of STA. If a conflict is irreconcilable, STA reserves the right to terminate this Agreement.

26. EMPLOYMENT

- A. The Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, STA shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
- B. The Consultant shall not engage, on a full or part time basis, or other basis, during the period of this Agreement, any professional or technical personnel who are, or have been, at any time during the period of this Agreement, in the employ of STA, except regularly retired employees, without written consent of STA.

- C. Consultant, without the written consent of STA, shall not directly or indirectly solicit, influence, entice or hire, or attempt to solicit, influence, entice or hire any employee of STA to: (a) cease employment with STA; or (b) do business related to a business connected with the Consultant's business during this Agreement and for a period of three (3) years from the date on which the Agreement terminates, or the Work is accepted by STA, whichever is later. STA's employee shall be deemed to be related to or connected with Consultant if such STA employee becomes (a) a partner in a general or limited partnership or employee of a partnership; or (b) a shareholder, officer, employee or director of a corporation, member, consultant or agent for the Consultant or any of Consultant's affiliates, subsidiaries or connected business. This Section shall survive the termination of this Agreement. This Agreement is not restricted to any geographical area.
- D. Consultant recognizes and acknowledges that STA's employees may receive training and other benefits from its contractual relationship with STA because of STA's assignment of employees to work in connection with this Agreement. Consultant agrees the restrictions on soliciting, influencing, enticing or hiring STA employees are reasonable.

27. TRADEMARKS AND LOGOS

The Parties to this Agreement are prohibited from using, and agree not to use, directly or indirectly, any name, trademark or logo of the other Parties without first obtaining prior written consent from the other Party.

28. RIGHTS IN DATA AND COPYRIGHTS/PATENTS

- A. The Consultant, without exception, shall indemnify and save harmless STA, its officers, directors, agents and employees from liability of any kind, including cost and expenses for or on account of any copyrighted, patented or unpatented invention, process or article manufactured or used in the performance of Work under this Agreement, including its use by STA.
- B. If the Consultant uses any design, device or materials covered by letters, patents or copyright, it is mutually agreed and understood without exception that the Consultant's compensation shall include all royalties or cost arising from the use of such design, device or materials in any way involved in the Work.
- C. If an infringement claim is made, Consultant will immediately and at its sole expense: (a) procure for STA the right to continue use and sale of the Work; or (b) replace the Work with a version of the Work that is non-infringing. If Consultant is unable to take either of the actions set forth in the preceding sentence, Consultant will promptly refund to STA all amounts paid to Consultant by STA hereunder for the Work; provided payment of such refund shall not act to relieve Consultant of any other obligations under this Agreement.
- D. Consultant warrants that:
 - (1) Consultant has the full and exclusive right and power to enter into and perform according to the terms of this Agreement;
 - (2) The products and services provided by Consultant do not and will not infringe any copyright, patent, trade secret, trademark or other proprietary right held by any third-party; and

- (3) Consultant will not, without the express prior written permission of STA, incorporate into its Work any third-party product, software or other materials for which the intellectual property rights are not owned or licensed solely by the Consultant.

29. PUBLIC RECORDS ACT

The Consultant understands and acknowledges that STA is a municipal corporation of the State of Washington subject to the "Public Records Act", RCW 42.56, *et seq.*

Consultant understands and agrees that the records it obtains or produces under this Agreement may be public records under the Public Records Act, or its successor act. The Consultant shall cooperate in a timely manner with STA in responding to a public records request ("PRR") related to this Agreement or the goods/services provided under this Agreement. Such cooperation shall include searching all records regarding the Work and producing all records that are potentially responsive to a PRR to STA. Consultant shall mark and segregate all materials in its possession that may be protected by the Public Records Act to protect against inadvertent disclosure of such documents and to facilitate STA's application of allowable Public Records Act exemptions. Consultant shall not charge STA for the time spent gathering and producing records pursuant to a PRR.

30. AUDIT/RECORDS

The Consultant shall maintain for a minimum of six (6) years following final payment all records related to its performance of this Agreement. STA may audit any record related to this Agreement for any reason and the Consultant shall provide copies of and access to, at reasonable times, any such records upon request by STA. The Consultant shall also provide access to authorized representatives of the Washington State Auditor's office at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to this Agreement, the federal law shall prevail.

Records and other documents, in any medium, furnished by any Party to this Agreement to another Party, will remain the property of the furnishing Party, unless otherwise agreed. Subject to Paragraph 29 of this Agreement, the receiving Party will not disclose or make available any confidential information to any third parties without first giving notice to the furnishing Party and giving it a reasonable opportunity to respond. Each Party will utilize reasonable security procedures and protections to assure that records and documents provided by the other Party or Parties are not erroneously disclosed to third parties.

31. INCORPORATION OF FEDERAL TERMS & CONDITIONS

This Agreement is funded, in whole or in part, by Federal assistance and is subject to the *Federal Terms & Conditions* attached hereto and incorporated herein as Exhibit E.

32. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement, but all of which together shall constitute one and the same instrument.

33. ELECTRONIC SIGNATURES

A signed copy of this Agreement or any other ancillary agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of any original executed copy of this Agreement or such other ancillary agreement for all purposes.

34. SIGNATURES

The Parties affirm that the individuals signing this Agreement have been granted the authority to do so and by their signature affirm that the Parties will comply with the terms and conditions of this Agreement.

Budinger & Associates, Inc.

Spokane Transit Authority

John Finnegan Sep 1, 2022

John E. Finnegan Date
 Chief Executive Officer

E. Susan Meyer Sep 1, 2022

E. Susan Meyer Date
 Chief Executive Officer

Attest:

Stephen Burchett Aug 29, 2022

Stephen D. Burchett Date
 President

Dana Infalt Sep 1, 2022

Dana Infalt Date
 Clerk of the Authority

DBE Compliance

Jordan Hayes-Horton Aug 26, 2022

Jordan Hayes-Horton Date
 Senior Procurement Manager & DBE Liaison

EXHIBIT A
SCOPE OF WORK
AGENCY BACKGROUND

Spokane Transit Authority (STA) is a municipal corporation formed in 1981 when the region's voters approved the establishment of a Public Transportation Benefit Area (PTBA). The regional Board of Directors is composed of elected officials appointed by their jurisdictions within the PTBA, and a non-voting labor representative.

The Chief Executive Officer, E. Susan Meyer, oversees the day-to-day operations of STA's Fixed Route Bus, Paratransit and Vanpool services.

Spokane Transit provides Fixed Route bus service on 43 different routes within the PTBA, which is comprised of 248 square miles within Spokane County. STA operates 167 buses, 28 of which are hybrid (diesel-electric) vehicles. The agency provided 5,817,776 bus rides in 2020, a 41.7% decrease over 2019 as pandemic restrictions and stay home orders changed the nature of commuting in the region.

STA's Paratransit service provides door-to-door, shared ride transportation for people who are disabled if the effects of their disabilities prevent them from using the regular bus. The Paratransit fleet of 109 lift-equipped vans provided 205,815 trips in 2020 including expanded access to the community through the Rides for Seniors program.

Vanpool is Spokane Transit's rideshare program. Groups of commuters share the cost of commuting and the ride to work in an STA van driven by one of the commuters. In 2020, Vanpool passengers made 90,770 trips.

STA employs approximately 620 people working in four locations in the Spokane region. The majority of these employees are vehicle operators and maintenance personnel. Spokane Transit has the following divisions: Executive Administration, Operations (Fixed Route, Paratransit and Vanpool), System Planning and Development, and Finance and Information Services.

STA is a no-debt agency. The primary source of funding comes from local sales and use tax, customer fares, and state and federal grants. Most public transit in Washington State is funded by up to 0.9% of local sales tax revenue with voter approval.

In 2016, after more than 35 years at the effective rate of 0.6%, voters approved a phased-in 0.2% increase to bring STA's funding rate to 0.8% by 2019. This new revenue is used to fund the 10-year *STA Moving Forward* plan to maintain, improve and expand service across the region.

EXHIBIT A
SCOPE OF WORK
GENERAL SCOPE OF WORK

Spokane Transit is seeking qualification responses from individual environmental, geotechnical and special inspection firms for consultant services for a five-year period commencing on August 1, 2022. The work will include various projects, including but not limited to, passenger facilities, industrial office space, remodels or modifications of existing facilities, fabrication of tools/equipment, installation of premanufactured tools/equipment, as well as future construction of new operations and/or maintenance facilities, etc.

The selected firm or team of firms is expected to provide:

- All aspects of and all phases of engineering, design, consultation for geotechnical, environmental, and materials inspections consulting services:
 - Environmental: engineering, design, drafting, consulting, exploration, sampling, laboratory testing, reporting (phase I/II/III environmental site assessments, technical memoranda, etc.); laboratory results evaluations and recommendations, assessments, checklists, NEPA and SEPA document preparation; UST or AST removals, replacements or installs; construction phase observations, reporting, sampling, testing, monitoring, etc.
 - Geotechnical: engineering, design, drafting consulting, exploration, sampling, laboratory testing, reporting (i.e., geotechnical engineering reports, technical memoranda, etc.); slope stability, shoring design, shoring observations, groundwater analysis and monitoring, pavement design, retaining wall and foundation design, seismic analysis, erosion control; construction phase observations, reporting, sampling, testing, monitoring, etc.
 - Special Inspections: geotechnical, environmental and materials (concrete, asphalt, rebar, structural steel, post installed anchors, soils, fluids, etc.) sampling, testing, reporting, assessments, check lists; construction inspection (including grading retaining walls, deep excavations, shoring, vibration and noise monitoring, etc.), observation and testing; Good Faith Hazardous materials inspections; Non-Residential Energy Code (NREC) plan review and inspections, etc.
- Support or assistance for grants, compliance documentation required by various funding sources, community outreach, coordination and compliance documentation required by various jurisdictional and regulatory authorities, etc.
- During all phases of a project (feasibility, public outreach, design, permitting, bidding, construction, STA Committee & Board, etc.) support of and preparation for attending and/or hosting meetings, etc.
- Cost estimating through all phases of a project.
- Creation of construction plans and specifications to be used in bidding and permitting.
- Review of other consultants plans and specifications as well as providing parameters for other consultants (civil, structural, etc.) use in their designs.
- Coordination with other consulting teams contracted by STA.
- Other engineering-special inspections tasks as assigned.

EXHIBIT C

SAMPLE WORK ORDER AMENDMENT

A&E SERVICES WORK ORDER AMENDMENT

This Work Order Amendment (“Amendment”) is entered into by and between **Budinger & Associates, Inc.** (“Consultant”) and the **Spokane Transit Authority** and is governed by the Environmental, Geotechnical and Special Inspections Engineering Services Agreement 2022-10674 (the “Master Agreement”).

In accordance with the terms and conditions of the Work Order and Master Agreement, upon the last date of execution of this Amendment, or the Commencement Date herein, whichever is later, the Consultant shall commence performance of services as required by the Scope of Work, as amended, attached hereto and incorporated herein as Exhibit A.

STA Work Order #:	10674-XXXX	Original Work Order \$:	\$ XXX,XXX.00
Amendment #:	XXX	Prior Amendment(s) \$:	\$ XXX,XXX.00
Amendment Start Date:		Current Amendment \$:	\$ XXX,XXX.00
Amendment End Date:		Total Work Order \$:	\$ XXX,XXX.00
STA Project:			
Amendment Title:			
Amendment Summary:			

The Parties affirm that the individuals signing this Work Order have been granted the authority to do so and by their signature affirm that the Parties will comply with the terms and conditions of this Work Order and the Master Agreement.

Budinger & Associates, Inc.

Spokane Transit Authority

Name **Date**
 Title

Name **Date**
 Title

EXHIBIT D
COMPENSATION SCHEDULE

1. Consultant not-to-exceed hourly rates:

NOT-TO-EXCEED HOURLY RATE TABLE				
A&E Name	ICR:	151.50%	Profit:	30%
Position Title	Direct Salary Rate	Indirect Cost Rate	Profit	Total
Administrator I	\$ 20.56	\$ 31.15	\$ 6.17	\$ 57.88
Administrator II	\$ 28.55	\$ 43.25	\$ 8.57	\$ 80.37
Administrator III	\$ 34.25	\$ 51.89	\$ 10.28	\$ 96.41
Administrator IV	\$ 51.38	\$ 77.84	\$ 15.41	\$ 144.63
		\$ -	\$ -	\$ -
Engineer I	\$ 34.25	\$ 51.89	\$ 10.28	\$ 96.41
Engineer II	\$ 45.67	\$ 69.19	\$ 13.70	\$ 128.56
Engineer III	\$ 57.10	\$ 86.51	\$ 17.13	\$ 160.74
Engineer IV	\$ 85.65	\$ 129.76	\$ 25.70	\$ 241.10
Engineer Principal	\$ 88.78	\$ 134.50	\$ 26.63	\$ 249.92
		\$ -	\$ -	\$ -
Engineering Technician I	\$ 23.98	\$ 36.33	\$ 7.19	\$ 67.50
Engineering Technician II	\$ 28.55	\$ 43.25	\$ 8.57	\$ 80.37
Engineering Technician III	\$ 31.00	\$ 46.97	\$ 9.30	\$ 87.27
		\$ -	\$ -	\$ -
Exploration Professional III	\$ 36.64	\$ 55.51	\$ 10.99	\$ 103.14
Exploration Professional IV	\$ 45.67	\$ 69.19	\$ 13.70	\$ 128.56
		\$ -	\$ -	\$ -
Exploration Technician I	\$ 21.69	\$ 32.86	\$ 6.51	\$ 61.06
Exploration Technician II	\$ 28.55	\$ 43.25	\$ 8.57	\$ 80.37
Exploration Technician III	\$ 34.25	\$ 51.89	\$ 10.28	\$ 96.41
		\$ -	\$ -	\$ -
Geologist I	\$ 27.40	\$ 41.51	\$ 8.22	\$ 77.13
Geologist II	\$ 34.25	\$ 51.89	\$ 10.28	\$ 96.41
Geologist III	\$ 39.96	\$ 60.54	\$ 11.99	\$ 112.49
Geologist IV	\$ 68.52	\$ 103.81	\$ 20.56	\$ 192.88
		\$ -	\$ -	\$ -
Quality Professional III	\$ 35.51	\$ 53.80	\$ 10.65	\$ 99.96
Quality Professional IV	\$ 51.38	\$ 77.84	\$ 15.41	\$ 144.63
		\$ -	\$ -	\$ -
Quality Technician I	\$ 22.33	\$ 33.83	\$ 6.70	\$ 62.86
Quality Technician II	\$ 28.55	\$ 43.25	\$ 8.57	\$ 80.37
Quality Technician III	\$ 38.83	\$ 58.83	\$ 11.65	\$ 109.31

EXHIBIT D
COMPENSATION SCHEDULE

2. Equipment & laboratory rates

Description	Rates
C: Bond Strength Equip ASTM C1583, Days	\$ 1,045.00
C: Calibrated Skidmore-Wilhelm, Days	\$ 110.00
C: Calibrated Torque Wrench, Days	\$ 82.50
C: Core Bit Wear, Inches	\$ 11.00
C: Core drill, Days	\$ 220.00
C: DCP - Dynamic Cone Penetrometer, Days	\$ 44.00
C: EZE Cure -Temperature Controlled Curing Equipment, Days	\$ 110.00
C: Floor Flatness Meter, Days	\$ 385.00
C: Floor Flatness Meter, Hours	\$ 165.00
C: Gloss Meter, Days	\$ 302.50
C: GPR Surveying Equipment, Hours	\$ 110.00
C: Hydraulic Test Ram, Days	\$ 275.00
C: Inclinator Reading Equipment, Days	\$ 462.00
C: Maturity Probe -Temperature Data Loggers, Days	\$ 110.00
C: MT Equipment & Consumables	\$ 40.00
C: Nuclear Densometer, Days	\$ 55.00
C: Phased Array Ultrasonic Testing Equipment and Consumables	\$ 165.00
C: pH Concrete Test, Each	\$ 44.00
C: PPC Bond Pull-out Test, Each	\$ 137.50
C: PT Equipment and Consumables	\$ 50.00
C: Pull Test Equip E488, Days	\$ 495.00
C: Relative Humidity Meter Reading, Days	\$ 110.00
C: Relative Humidity Probe- Installation, Each	\$ 82.50
C: Schmidt Hammer, Days	\$ 165.00
C: Shotcrete Panel, Each	\$ 220.00
C: Slip Meter, Days	\$ 605.00
C: Telescopic Camera, Days	\$ 143.00
C: Trucks -F150 Light Duty Truck 100-199 HP, Hours	\$ 24.98
C: Trucks -F450 Lt Duty Truck 100-199 HP, Hours	\$ 44.41
C: Trucks -Light Duty, Days	\$ 88.00
C: Trucks -Light Duty, Hours	\$ 24.20
C: Ultrasonic Testing Equipment & Consumables	\$ 75.00
C: UTM -Ultrasonic Thickness Meter, Hours	\$ 85.00
C: Vapor Emissions Test Kit, Each	\$ 66.00
D: Boart Longyear Grout Master 2-inch Moyno 2L4 Grout Plant, Hours	\$ 66.00
D: Cat 315C L Crawler-Mounted Hydraulic Excavator, Hours	\$ 136.89
D: CG680 Colloidal Grout Plant, Hours	\$ 71.92
D: CPT Advancement, Feet	\$ 66.00
D: DCP - Dynamic Cone Pentrometer, Hours	\$ 57.20
D: Down-hole Camera System, Days	\$ 550.00
D: Down-hole Camera System, Hours	\$ 110.00
D: Drill Rigs -CME Drill Mounted to Peterbuilt Tractor, Hours	\$ 192.50
D: Drill Rigs -Comacchio MC-14, Hours	\$ 343.20
D: Drill Rigs -Gardner Denver SCH 2500 Airtrack Drill, Hours	\$ 242.00
D: Drill Rigs -Gardner Denver SCH 3500 Airtrack Drill, Hours	\$ 252.50
D: Drill Rigs -GeoProbe 7822, Hours	\$ 249.70

EXHIBIT D
COMPENSATION SCHEDULE

Description	Rates
D: Drill Rigs -GeoProbe 8150, Hours	\$ 401.50
D: Drill Rigs -K40 Hammer Drill, Hours	\$ 205.70
D: Drill Rigs -Longyear Hydracore 28 Skid-Mounted Short Coring Drill, Hours	\$ 176.00
D: Drill Rigs -Mobile B-57 Vertical Earth Drill, Hours	\$ 184.80
D: Drill Rigs -TEI HEMH 5012, Hours	\$ 264.00
D: Drill Rigs -TEI MP 260, Hours	\$ 104.50
D: Generator -5 Kwt, Day	\$ 110.00
D: Intric D-12 Colloidal Piston Grout Plant, Hours	\$ 55.00
D: IR 350psi/900cfm XHP-900-W 425 HP, Hours	\$ 126.12
D: IR Portable rotary screw air compressor 200 psi/350 cfm, Hours	\$ 52.55
D: Jean Lutz Recording System for Grout Pressure and Flow, Hours	\$ 82.50
D: MS140 Mud Recycler, Hours	\$ 83.60
D: Pavement Test Core Drill, Hours	\$ 27.50
D: Perkins 100hp Power Pack, Hours	\$ 71.92
D: Pump Hoist Truck, Hours	\$ 192.50
D: Reed B20 Concrete Pump, Hours	\$ 67.75
D: Site Mix Truck, Hours	\$ 130.28
D: Split Spoon Samplers, Each	\$ 44.00
D: Terex ASV PT-80 multi terrain track vehicle, Hours	\$ 90.30
D: Tooling -Air Rotary Drill Tooling, Hours	\$ 55.00
D: Tooling -Flight Auger Drill Tooling, Hours	\$ 44.00
D: Tooling -Percussion-type Drill Tooling, Hours	\$ 44.00
D: Tooling -Sonic Drill Tooling, Hours	\$ 119.86
D: Track Loader PT 100, Hours	\$ 80.85
D: Trailers -10,000lb Tilt Deck, Hours	\$ 22.00
D: Trailers -Ledwell Gooseneck Equipment Trailer, Hours	\$ 22.00
D: Trucks -F150 Lt Duty Truck 100-199 HP, Hours	\$ 24.98
D: Trucks -F450 Lt Duty Truck 100-199 HP, Hours	\$ 44.41
D: Trucks -F550 Lt Duty Truck 100-199 HP, Hours	\$ 28.60
D: Trucks -Freightliner F16, Hours	\$ 54.65
D: Trucks -IHC 4800 4x4 Rear Dump Truck, Hours	\$ 60.00
D: Trucks -Kenworth T400, Hours	\$ 77.28
D: Trucks -Vertical Earth drill Carrier-Freightliner, Hours	\$ 77.89
D: Volvo Mini Excavator, Hours	\$ 73.98
E: Decon Equipment, Days	\$ 88.00
E: Diamond Core Machine, Days	\$ 44.00
E: Downhole Underwater Camera, Days	\$ 550.00
E: Drone, Days	\$ 330.00
E: Drums, Each	\$ 88.00
E: Environmental Supplies	\$ 110.00
E: Field Meter, Days	\$ 44.00
E: PID - Photo Ionization Detector, Days	\$ 132.00
E: Trucks -Light Duty Support Truck, Days	\$ 220.00
E: Trucks -Light Duty Support Truck, Hours	\$ 24.20
G: GPR System Surveying, Hours	\$ 143.47

EXHIBIT D
COMPENSATION SCHEDULE

Description	Rates
L: Atterberg Limits	\$ 175.00
L: Aggregate Durability Index	\$ 302.50
L: Asphalt Content With Sieve Analysis	\$ 300.00
L: Asphalt Oil Content Ignition Furnace	\$ 160.00
L: Asphalt Reflux/Extraction (with Ensolve)	\$ 330.00
L: Burn Bag with Processing Rock per Bag	\$ 99.00
L: CBR (100%)	\$ 357.50
L: CBR -California Bearing Ratio, 3 Point	\$ 440.00
L: CEC -Cation Exchange Capacity	\$ 44.00
L: Checkpoint (Proctor)	\$ 82.50
L: Chlorides	\$ 44.00
L: Clay Lumps & Friable Materials	\$ 165.00
L: Cleaness Value	\$ 165.00
L: CMU -Masonry Compressive Strength	\$ 99.00
L: Coarse and Fine Gradation	\$ 150.00
L: Coarse and Fine Gradation with .02mm Material	\$ 195.00
L: Coarse and Fine Gradation with 3" Material	\$ 180.00
L: Compressive Strength Fiber Polymer R	\$ 33.00
L: Compressive Strength of Concrete	\$ 30.00
L: Compressive Strength of Grout	\$ 30.00
L: Compressive Strength of Mortar	\$ 30.00
L: Compressive Strength of Prism	\$ 100.00
L: Compressive Strength Specimen- Shotcrete	\$ 44.00
L: Concrete Masonry Absorption	\$ 66.00
L: Concrete Masonry Moisture	\$ 66.00
L: Concrete Masonry Shrinkage	\$ 44.00
L: Consolidation	\$ 495.00
L: Core Concrete Compressive Strength	\$ 55.00
L: CTB Compressive Strength Mix Design, by Quote	Quote
L: Density of Soil in Place	\$ 66.00
L: Direct Shear (per point)	\$ 247.50
L: Disintegration (Ethylene Glycol)	\$ 286.00
L: DMSO	\$ 286.00
L: Dry Rodded Weight	\$ 88.00
L: Expansion Index	\$ 242.00
L: Expansive Pressure	\$ 198.00
L: Fireproofing Density	\$ 82.50
L: Flat & Elongated Particles	\$ 192.50
L: Flexural Strength Beams	\$ 82.50
L: Fractured Face Count	\$ 165.00
L: Grouted Prism (8"x8"x16")	\$ 140.00
L: HMA Core Density	\$ 44.00
L: HMA Core Density Parafilm	\$ 55.00
L: HMA Mix Design (Quote)	Quote
L: HMA Mix Design Verification (Quote)	Quote

EXHIBIT D
COMPENSATION SCHEDULE

Description	Rates
L: Hydrometer Analysis with Gradation	\$ 220.00
L: ID Degradation	\$ 302.50
L: LA Abrasion (Large-Size Coarse)	\$ 385.00
L: LA Abrasion (Coarse)	\$ 275.00
L: Lab Trailer, Weekly (Quote)	Quote
L: Lightweight Particles 2.0 SG	\$ 242.00
L: Lightweight Particles 2.4 SG	\$ 352.00
L: Marshal 4" Cores	\$ 66.00
L: Marshal Field Mix	\$ 220.00
L: Marshal Flow & Stability Volumetrics (3)	\$ 350.00
L: Marshal Lab Mix	\$ 308.00
L: Masonry Compressive Strength Mortar	\$ 33.00
L: Maximum Density & Optimum Moisture - Proctor	\$ 180.00
L: Minimum Resistivity (Soil Box)	\$ 192.50
L: Moisture Content (soil)	\$ 27.50
L: Oil Content/Sieve Analysis	\$ 286.00
L: Organic Content	\$ 82.50
L: Organic Impurities (Fine)	\$ 165.00
L: Permeability (Flexible Wall)	\$ 434.50
L: Permeability (Rigid Wall)	\$ 324.50
L: pH (Soil)	\$ 38.50
L: pH (Water)	\$ 38.50
L: Pinhole Test	\$ 192.50
L: Plasticity Index	\$ 175.00
L: Ram Calibration	\$ 440.00
L: Reaction to Hydrochloric Acid	\$ 44.00
L: Rock Core Point Load	\$ 110.00
L: Rush Charge (Quote)	Quote
L: Sample Preparation	\$ 77.00
L: Sand Blasting Air Pot	\$ 66.00
L: Sand Equivalent	\$ 165.00
L: Shrinkage Limits	\$ 121.00
L: Sieve Analysis	\$ 150.00
L: Sieve with .02mm	\$ 195.00
L: Slake Durability Index	\$ 302.50
L: Specific Gravity & Absorption (Coarse)	\$ 88.00
L: Specific Gravity & Absorption (Fine)	\$ 165.00
L: Specific Gravity Asphalt Compacted Sample	\$ 55.00
L: Specific Gravity of Soils	\$ 192.50
L: Specific Gravity on compacted asphalt sample w/parffin	\$ 66.00
L: Splitting Tensile Strength (6"x12" Cyl)	\$ 88.00
L: Suite Chemical Tests: pH, Sulfates, Chlorides	\$ 88.00
L: Sulfate Soundness (5 Cycles, CA or FA each)	\$ 385.00
L: Sulfates	\$ 44.00
L: Tensile Strength Ratio	\$ 440.00

EXHIBIT D
COMPENSATION SCHEDULE

Description	Rates
L: TMD -Theoretical Max Density (Rice)	\$ 132.00
L: Topsoil Suite	\$ 209.00
L: Triaxial Shear CD Clay, Each Point	\$ 715.00
L: Triaxial Shear CD Sand, Each Point	\$ 275.00
L: Triaxial Shear CU, Each Point	\$ 357.50
L: Triaxial Shear UU (per point)	\$ 275.00
L: Uncompacted Void Content	\$ 165.00
L: Unconfined Compression of Cohesive Soils	\$ 275.00
L: Unconfined Compression of Rock Core	\$ 165.00
L: Uniaxial Compressive Strength	\$ 275.00
L: Unit Weight (Undisturbed)	\$ 44.00
L: Unit Weight Air Pot	\$ 82.50
L: Visual Classification	\$ 132.00
L: Volumetrics - Superpave	\$ 385.00
L: WA Degradation	\$ 302.50
L: Wash Analysis #200	\$ 93.50
L:Cyl Density Density of 6"x12" Cylinders	\$ 198.00
Mtl: bentonite bentonite (Quote)	Quote
Mtl: cement Type I/II cement (Quote)	Quote
MTL: Cold Patch Sakrete 50 lb bag Asphalt Cold Patch (Quote)	Quote

EXHIBIT D

COMPENSATION SCHEDULE

3. Travel. Consultant travel expenses for on-demand services shall be reimbursed to Consultant at actual cost, except as noted otherwise below. Receipts are required unless noted otherwise. The Consultant should exercise sound business judgement when incurring costs during travel status and select the most economical option to STA.
 - A. Airfare. Reimbursement shall be limited to the cost of coach-class airfare. Charges in excess of coach class fare shall be borne strictly by the Consultant.
 - (1) Change Fees. Change fees, if any, shall be reimbursed if changes to Consultant's schedule are necessitated by STA.
 - (2) Baggage. Baggage charges for up to two (2) bags per individual.
 - B. Lodging. Reimbursement shall be limited to Washington State Per Diem rates for lodging within Washington State or the federal lodging per diem rate for locations outside of the State of Washington (the "government rate") in effect on the date(s) of travel, plus applicable taxes and mandated fees. All other charges, including but not limited to, personal telephone charges, room service, entertainment, and tips or gratuities are excluded. Federal per diem rates can be found at <https://www.gsa.gov/travel/plan-book/per-diem-rates>. State of Washington per diem rates can be found at <https://www.ofm.wa.gov/accounting/administrative-accounting-resources/travel>.
 - C. Transportation. Reimbursement for transportation expenses shall occur at Consultant's cost, as follows:
 - (1) Rental Car. Reimbursement shall be limited to vehicles which are reasonably necessary for the Consultant to perform its relevant duties while in travel status.
 - (2) Public Transportation, Taxis, Transporter Services, etc. Limited to actual cost which is less than or equal to the cost of customary taxi charges, plus tip, not to exceed fifteen percent (15%). Charges are limited to business-related transactions only. Receipts are required.
 - (3) Tolls & Parking. Receipts are required.
 - D. Meals & Incidentals. Consultant staff shall be paid the daily Washington State Per Diem rate for Spokane County for each calendar day the Consultant is in travel status.

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FEDERAL TERMS & CONDITIONS 03.25.21

1. **DEFINITIONS**

The following capitalized terms shall be defined as follows throughout these Federal Terms & Conditions (“T&C”). In the event of a conflict between these T&C and the document(s) to which they are attached, the terms of these T&C shall prevail.

Terms which are capitalized herein, but not defined hereunder, will have the same definition and meaning as used in the document(s) to which these T&C are attached. In the event of a conflict between the definition of a defined term in these T&C and the document(s) to which they are attached, the definition used in these T&C shall prevail in the interpretation of these T&C.

Term	Definition
ADA	Americans with Disabilities Act of 1990, as amended.
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
DOJ	United States Department of Justice
DOL	United States Department of Labor
DOT	United States Department of Transportation
EEOC	Equal Employment Opportunity Commission
EPA	United States Environmental Protection Agency
FHWA	United States Federal Highway Administration
FTA	Federal Transit Administration
GSA	United States General Services Administration
SAT	Federal Simplified Acquisition Threshold; Currently \$250,000.
T&C	These Federal Terms & Conditions.
US	United States of America
USC	United States Code

2. **FLY AMERICA**

- A. Applicability: All contracts involving transportation of persons or property by air between the US and/or places outside the US.
- B. Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.
- C. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

3. **BUY AMERICA**

- A. Applicability: Construction contracts and acquisition of goods or “Rolling Stock” valued at more than \$150,000.
- B. Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject

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FEDERAL TERMS & CONDITIONS 03.25.21

to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating or planning funds.

Separate requirements for Rolling Stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling Stock must be manufactured in the US and have a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A Proposer shall submit appropriate Buy America certification to STA with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

4. CHARTER SERVICE

- A. Applicability: Operational service contracts.
- B. Contractor shall comply with 49 USC 5323(d) and (r) and 49 CFR part 604, which state that recipients and subrecipients of FTA assistance may not provide charter service using equipment or facilities acquired with Federal assistance if there is at least one private charter operator willing and able to provide the service, except as permitted by:
 - 1) 49 USC 5323(d) or other Federal transit laws;
 - 2) 49 CFR part 604;
 - 3) Any other federal Charter Service regulations; or
 - 4) Federal guidance, except as FTA determines otherwise in writing.
- C. The Contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies, which may include:
 - 1) Barring STA, the Contractor, or any subcontractor operating public transportation from receiving Federal assistance;
 - 2) Withholding an amount of federal assistance from STA as provided by Appendix D to 49 part 604; or
 - 3) Any other appropriate remedy.
- D. Contractor shall include this clause in each subcontract for the operation of public transit services.

5. SCHOOL BUS OPERATIONS

- A. Applicability: Operational service contracts.
- B. Pursuant to 49 USC 5323(f) and 49 CFR part 605, Contractor and any of its subcontractors shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless permitted under specified exemptions. When operating exclusive school bus service under an allowable exemption, Contractor and any of its subcontractors shall not use federally funded equipment, vehicles, or facilities.
- C. Violations. If STA, the Contractor and any of its subcontractors operate school bus service in violation of FTA's School Bus laws and regulations, FTA may:
 - 1) Require STA, the Contractor and any of its subcontractors to take such remedial measures as FTA considers appropriate; or
 - 2) Bar STA, the Contractor and any of its subcontractors from receiving Federal transit funds.

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6. CARGO PREFERENCE

- A. Applicability: Contracts involving equipment, materials or commodities which may be transported by ocean vessels.
- B. Contractor shall abide by the provisions of 46 CFR 381 as follows:
 - 1) Use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; and
 - 2) Furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to STA (through contractor in the case of a subcontractor's bill-of-lading.); and
 - 3) include these requirements in all subcontracts issued pursuant to this Contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

7. SEISMIC SAFETY

- A. Applicability: Architectural & Engineering contracts; Construction contracts for new buildings or additions to existing buildings.
- B. Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in DOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

8. ENERGY CONSERVATION

- A. Applicability: All contracts.
- B. Contractor shall comply with mandatory standards and policies relating to energy efficiency stated in the Washington State energy conservation plan issued in compliance with the Energy Policy & Conservation Act (42 USC 6201 *et seq.*), and perform an energy assessment for any buildings constructed or altered in accordance with FTA *Requirements for Energy Assessments*, at 49 CFR part 622, subpart C.

9. CLEAN WATER

- A. Applicability: All contracts and subcontracts over \$150,000.
- B. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 *et seq.* Contractor shall report each violation to STA and understands and agrees that STA shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- C. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

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10. BUS TESTING

- A. Applicability: Rolling Stock purchase or lease contracts.
- B. Contractor [Manufacturer] shall comply with the Bus Testing requirements under 49 USC5318(e) and FTA's implementing regulation at 49 CFR part 665 to ensure that the requisite testing is performed for all new bus models, or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the Contractor [Manufacturer] shall obtain a copy of the bus testing reports from the operator of the testing facility and make the report(s) available to the public prior to final acceptance of the first vehicle by STA or another recipient.

11. PRE-AWARD & POST-DELIVERY AUDIT REQUIREMENTS

- A. Applicability: Rolling Stock (revenue service) purchases.
- B. Contractor shall comply with 49 USC 5323(m) and FTA's implementing regulation 49 CFR part 663 and submit the following certifications:
 - 1) Buy America Requirements. Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:
 - a. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
 - b. The location of the final assembly point for the Rolling Stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
 - 2) Solicitation Specification Requirements. Contractor shall comply with the Buy America certification(s) submitted with its the bid specifications.
 - 3) Federal Motor Vehicle Safety Standards (FMVSS). Contractor shall submit:
 - a. manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS; or
 - b. manufacturer's certified statement that the buses will not be subject to FMVSS regulations.
- C. Contractor shall participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 CFR part 663 and related FTA guidance.

12. LOBBYING

- A. Applicability: All contracts over \$100,000.
- B. Contractor shall execute the Lobbying Restriction Certificate attached to this Contract.

13. ACCESS TO RECORDS AND REPORTS

- A. Applicability: All contracts.
- B. The following access to records requirements apply to this Contract:
 - 1) Access to Records. Under 49 USC 5325(g), FTA has the right to examine all records, documents, papers, and contracts related to any FTA funded project. Therefore, Contractor shall permit FTA and its contractors' access and rights to reproduce or copy project related documents. Pursuant to 49 CFR part 633, this provision extends to any Project Management Oversight ("PMO") contractor if the federally funded contract is used in a major capital project as defined therein.

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- 2) Records Retention. Pursuant to 2 CFR 200.333 Contractor shall retain, and shall require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including, but not limited to books, accounts, reports, data, documents, statistics, sub-agreements, leases, subcontracts, arrangements other third-party agreements of any type, and supporting materials related to those records for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor shall maintain such records until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- 3) Access to the Sites of Performance. The Contractor agrees to permit STA, FTA, and its contractors' access to the sites of performance under this Contract as reasonably may be required.
- 4) Contractors shall include these requirements in their contracts and subcontracts with third parties at every tier.

14. FEDERAL CHANGES

- A. Applicability: All contracts.
- B. Contractor shall comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between STA and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to comply shall constitute a material breach of this Contract.

15. BONDING REQUIREMENTS

- A. Applicability: All bonds are required for construction or facility improvement contracts or subcontracts exceeding the SAT.
- B. Bid Bond
 - 1) A bid bond equivalent to five percent (5%) of the bid price must be issued by a fully qualified surety company acceptable to STA and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.
 - 2) Rights Reserved
 - a. In submitting its bid, it is understood and agreed by Contractor that the right is reserved by STA to reject any and all bids, or part of any bid, and it is agreed that the bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of STA.
 - b. It is also understood and agreed that if the Contractor should withdraw any part or all of its bid within ninety (90) days after the bid opening without the written consent of STA, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable performance and/or payment bond(s), or refuse or be unable to furnish adequate and acceptable insurance, Contractor shall forfeit its bid bond to the extent of STA's damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security therefor.
 - c. It is further understood and agreed that to the extent the Contractor's bid bond (excluding any income generated thereby which has been retained by STA as provided in the Instructions to Bidders) shall prove inadequate to fully recompense STA for the damages occasioned by default, then the Contractor agrees to indemnify STA and pay over to STA the difference between the bid bond and STA's total damages, so as to make STA whole.

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FEDERAL TERMS & CONDITIONS 03.25.21

- d. The Contractor understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.
- C. Performance and Payment Bonds - Construction. The Contractor shall be required to obtain performance and payment bonds as follows:
- 1) Performance bonds.
 - a. The penal amount of performance bonds shall be one hundred percent (100%) of the original Contract sum, unless FTA determines in writing that a lesser amount would be adequate for the protection of the Federal interest. The bond shall be issued by a fully qualified surety company acceptable to STA and listed as a company currently authorized under 31 CFR part 223 as possessing a Certificate of Authority as described thereunder.
 - b. STA may require additional performance bond protection when the Contract sum is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in Contract sum. STA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
 - 2) Payment bonds.
 - a. The penal amount of the payment bonds shall be one hundred percent (100%) of the original Contract sum, unless FTA determines in writing that a lesser amount would be adequate for the protection of the Federal interest. The bond shall be issued by a fully qualified surety company acceptable to STA and listed as a company currently authorized under 31 CFR part 223 as possessing a Certificate of Authority as described thereunder.
 - b. STA may require additional payment bond protection when the Contract sum is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in Contract sum. STA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

16. CLEAN AIR

- A. Applicability – All contracts and subcontracts over \$150,000.
- B. Contractor shall comply with all applicable standards, orders, or regulations pursuant to the Clean Air Act, 42 USC 7401 *et seq.* Contractor shall report each violation to STA and understands and agrees that STA will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- C. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

17. RECYCLED PRODUCTS

- A. Applicability. All contracts for items designated by the EPA when STA or Contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds.
- B. The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment and are energy efficient by complying with and facilitating compliance with the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), 42 USC 6962 *et seq.*, as amended, and the US Environmental Protection Agency's regulation titled *Comprehensive Procurement Guideline for Products Containing Recovered Materials*, 40 CFR part 247.

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18. EMPLOYEE PROTECTIONS (DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS, DOL WORK HOURS AND SAFETY STANDARDS)

- A. Applicability. Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting.
- B. Prevailing Wage and Anti-Kickback.
- 1) For all prime construction, alteration, or repair contracts in excess of \$2,000 awarded by STA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 USC § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the *Davis-Bacon Act*, 40 USC §§ 3141-3144 and 3146-3148, as supplemented by DOL regulations at 29 CFR part 5, *Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction*. In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once per week. The Contractor shall also comply with the *Copeland "Anti-Kickback" Act*, 40 USC § 3145, as supplemented by DOL regulations at 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 Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

19. CONTRACT WORK HOURS & SAFETY STANDARDS ACT - CONSTRUCTION CONTRACTS

- A. Applicability. Construction contracts over \$100,000.
- B. Contract Work Hours and Safety Standards.
- 1) For all construction contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the *Contract Work Hours and Safety Standards Act*, 40 USC §§ 3701-3708, as supplemented by the DOL regulations at 29 CFR part 5. Under 40 USC § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half (1-1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The requirements of 40 USC § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
 - 2) In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by this clause.

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- 3) STA or the FTA shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the *Contract Work Hours and Safety Standards Act*, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
- 4) Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Section.

20. CONTRACT WORK HOURS & SAFETY STANDARDS ACT – NON-CONSTRUCTION CONTRACTS**A. Applicability. Non-construction contracts over \$100,000.**

- 1) The Contractor shall comply with all federal laws, regulations and requirements providing wage and hour protections for non-construction employees, in accordance with 40 USC § 3702, *Contract Work Hours and Safety Standards Act*, and other relevant parts of that Act, 40 USC § 3701 *et seq.*, and US DOL regulations, *Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)*, 29 CFR part 5.
- 2) The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- 3) Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.
- 4) The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

21. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**A. Applicability. All contracts.**

- B. STA and Contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the US Government, the US Government is not a party to this Contract and shall not be subject to any obligations or liabilities to STA, the Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from the underlying Contract.

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

22. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- A. Applicability. All contracts.
- B. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 *et seq.*, and DOT regulations, *Program Fraud Civil Remedies*, 49 CFR 31, apply to its actions pertaining to this Contract. Upon execution of the underlying Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or causes to be made, pertaining to the underlying Contract or FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on Contractor to the extent the US Government deems appropriate.
- C. If Contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5323(l)(1) on Contractor, to the extent the US Government deems appropriate.
- D. Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

23. TERMINATION

- A. Applicability. All contracts over \$10,000.
- B. Termination for Convenience.
- 1) All Contracts Except as Provided Otherwise Herein. STA may terminate this Contract, in whole or in part, at any time by written notice to Contractor when it is in STA's best interest. Contractor shall be paid its costs, including Contract close-out costs, and profit on work performed up to the date and time of termination. Contractor shall promptly submit its termination claim to STA. If Contractor is in possession of any STA property, Contractor shall account for same, and dispose of it as STA directs in writing. If Contractor has possession of STA goods, Contractor shall protect and preserve the goods until surrendered to STA or its agent.
 - 2) Architectural and Engineering Contracts. STA may terminate this Contract, in whole or in part, at any time by written notice to Contractor when it is in STA's best interest. STA shall terminate by delivering to Contractor a notice of termination specifying the nature, extent, and effective date of termination. Contractor shall be paid its costs, including Contract close-out costs, and profit on work performed up to the date and time of termination, but shall allow no anticipated profit on unperformed services. Contractor shall promptly submit its termination claim to STA. Upon receipt of the notice, Contractor shall:
 - a. Immediately discontinue all services affected (unless the notice directs otherwise);

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- b. deliver to STA all data, drawings, specifications, reports, estimates, summaries and other information and materials accumulated in performing this Contract, whether completed or in process.
- c. If Contractor is in possession of any STA property, Contractor shall account for same and dispose of it as STA directs in writing.

C. Termination for Default, Breach or Cause

- 1) All Contracts Except as Provided Otherwise Herein. If Contractor does not deliver goods in accordance with the Contract delivery schedule, or if the Contract is for services and Contractor fails to perform in the manner called for in the Contract, or if Contractor fails to comply with any other provisions of the Contract, STA may terminate this Contract for default. Termination shall be effected by serving a notice of termination to Contractor setting forth the manner in which Contractor is in default. Contractor shall only be paid the Contract price for goods delivered and accepted, or for services performed, in accordance with the manner of performance set forth in the Contract. If this Contract is terminated while Contractor has possession of STA goods, Contractor shall protect and preserve the goods until surrendered to STA or its agent.

If it is later determined by STA that Contractor had an excusable reason for non- performance, such as a strike, fire or flood, events which are not the fault of or are beyond the control of Contractor, STA, after setting up a new delivery or performance schedule, may allow Contractor to continue work, or treat the termination as a termination for convenience.

- 2) Construction Contracts. If Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified, or any extension, or fails to complete the work within this time, or if Contractor fails to comply with any other provisions of this Contract, STA may terminate this Contract for default. STA shall terminate by delivering to Contractor a notice of termination specifying the nature of default. In this event, STA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to STA resulting from Contractor's refusal or failure to complete the work within specified time, whether or not Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by STA in completing the work. Contractor's right to proceed shall not be terminated nor shall Contractor be charged with damages under this clause if:
- a. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include acts of God, acts of STA, acts of another contractor in the performance of a contract with STA, epidemics, quarantine restrictions, strikes, freight embargoes; and
 - b. Contractor, within ten (10) days from the beginning of any delay, notifies STA in writing of the causes of delay. If in STA's judgment, delay is excusable, the time for completing the work shall be extended. STA's judgment shall be final and conclusive on the Parties, but subject to appeal under the Disputes clause.

If, after termination of Contractor's right to proceed, it is determined that Contractor was not in default, or that the delay was excusable, the rights and obligations of the Parties will be the same as if termination had been issued for STA's convenience.

- 3) Architectural & Engineering Contracts. STA may terminate this Contract, in whole or in part, because of Contractor's failure to fulfill Contract obligations. STA shall terminate by

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delivering to Contractor a notice of termination specifying the nature and extent of default and effective date of termination. Upon receipt of such notice, Contractor shall:

- a. Immediately discontinue all services affected (unless the notice directs otherwise);
- b. deliver to STA all data, drawings, specifications, reports, estimates, summaries and other information and materials accumulated in performing this Contract, whether completed or in process.

STA may complete the work by Contact or otherwise and Contractor shall be liable for any additional cost incurred by STA.

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

- D. Opportunity to Cure. STA, in its sole discretion, may, in the case of a termination for breach or default, allow Contractor an appropriate period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions.

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

- E. Waiver of Remedies for any Breach. In the event that STA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

24. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

- A. Applicability. Contracts over \$25,000.
- B. The Contractor agrees to the following:
 - 1) It will comply with the requirements of 2 CFR part 180, subpart C, as adopted and supplemented by DOT regulations at 2 CFR part 1200, which include the following:
 - a. It will not enter into any arrangement to participate in the development or implementation of the Contract with any third-party that is debarred or suspended except as authorized by:
 - (1) DOT regulations, *Nonprocurement Suspension and Debarment*;
 - (2) 2 CFR part 1200, US OMB, *Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)*;
 - (3) 2 CFR part 180, including any amendments thereto; and
 - (4) Executive Orders Nos. 12549 and 12689, *Debarment and Suspension*, 31 USC § 6101 note.
 - b. It will review the GSA "System for Award Management" (<https://www.sam.gov>), if required by DOT regulations, 2 CFR part 1200.
 - c. It will include, and require each of its third-party contractors to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier third-party:

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- (1) Will comply with Federal debarment and suspension requirements; and
 - (2) Review the System for Award Management (<https://www.sam.gov>), if necessary, to comply with DOT regulations, 2 CFR part 1200; and
- 2) If Contractor suspends, debar, or takes any similar action against a third-party or individual, Contractor will provide immediate written notice to the:
- a. STA;
 - b. FTA Regional Counsel for the Region in which STA is located or implements the project;
 - c. FTA Project Manager if the project is administered by an FTA Headquarters Office; or
 - d. FTA Chief Counsel.

25. CIVIL RIGHTS REQUIREMENTS

- A. Applicability – All contracts.
- B. STA is an Equal Opportunity Employer. As such, STA agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, STA agrees to comply with the requirements of 49 USC § 5323(h)(3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

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

- 1) Nondiscrimination. In accordance with Federal transit law at 49 USC § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 2) Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e *et seq.*, and Federal transit laws at 49 USC § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of US DOL regulations, *Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor*, 41 CFR chapter 60, and Executive Order No. 11246, *Equal Employment Opportunity in Federal Employment*, September 24, 1965, 42 USC § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 USC § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 3) Age. In accordance with the Age Discrimination in Employment Act, 29 USC §§ 621-634, US Equal Employment Opportunity Commission (US EEOC) regulations, *Age Discrimination in Employment Act*, 29 CFR part 1625, the Age Discrimination Act of 1975, as amended, 42 USC § 6101 *et seq.*, US Health and Human Services regulations, *Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance*, 45 CFR part 90, and Federal transit law at 49 USC § 5332, the Contractor agrees to refrain from discrimination

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against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- 4) Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, the Americans with Disabilities Act of 1990, as amended, 42 USC § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 USC § 4151 *et seq.*, and Federal transit law at 49 USC § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the DOL, the Contractor agrees to comply, and assures the compliance of each subcontractor, with:

- 1) DOL regulations, *Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor*, 41 CFR chapter 60; and
- 2) Executive Order No. 11246, *Equal Employment Opportunity*, as amended by Executive Order Nos. 11375 and 13672, 42 USC § 2000e note; and
- 3) Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)
 - a. The Contractor's attention is called to the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Specifications” set forth herein.
 - b. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goal for Minority Participation Each Trade	Goal for Female Participation Each Trade
2.8%	6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

- c. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract

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resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

- d. As used in this notice, and in the contract resulting from this solicitation, the “covered area” is Spokane County, City of Spokane, State of Washington.

26. BREACHES AND DISPUTE RESOLUTION

- A. **Applicability** – All contracts exceeding the SAT.
- B. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by STA’s Contract Compliance Specialist. This decision shall be final and conclusive, unless within ten (10) days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to STA’s CEO. In connection with such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of STA’s CEO shall be binding upon Contractor and Contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 USC § 3729.
- C. **Performance During Dispute.** Unless otherwise directed in writing by STA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- D. **Claims for Damages.** Should either Party suffer injury or damage to person or property because of any act or omission of the other Party or of any of its employees, agents, or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other Party within ten (10) days after the first observance of such injury or damage.
- E. **Remedies.** Unless this Contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between STA and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Washington.
- F. **Rights and Remedies.** Duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by STA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

27. PATENT AND DATA RIGHTS

- A. **Applicability.** Contracts involving experimental, developmental, or research work.
- B. **Patent Rights.**
 - 1) **General.** STA and the Contractor agree:
 - a. Depending on the nature of the project, the Federal Government may acquire patent rights when STA or Contractor produces a patented or patentable invention, improvement, or discovery.
 - b. The Federal Government’s rights arise when the patent or patentable information is conceived under the project or reduced to practice under the project.
 - c. When a patent is issued or patented information becomes available, the Contractor agrees to:

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- (1) Notify STA immediately, and
 - (2) Provide STA a detailed report satisfactory to FTA.
- 2) Federal Rights. The Contractor agrees that:
- a. Its rights and responsibilities, and the rights and responsibilities of each subcontractor, in that federally funded invention, improvement or discovery will be determined as provided by applicable Federal laws, regulations and guidance, including any waiver thereof; and
 - b. Unless the Federal Government determines otherwise in writing, irrespective of the Contractor's status or the status of any subcontractor as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education or an individual, the Contractor agrees to transmit the Federal Government's patent rights to FTA as specified in:
 - (1) 35 USC § 200 *et seq.*; and
 - (2) US Department of Commerce regulations, *Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements*, 37 CFR part 401.
- 3) License Fees and Royalties. As permitted by 2 CFR 200, Appendix II (F):
- a. License fees and royalties for patents, patent applications and inventions derived from the project are program income; and
 - b. The Contractor has no obligation to the Federal Government with respect to those license fees or royalties; except:
 - (1) For compliance with 35 USC § 200 *et seq.*, which applies to patent rights developed under a federally funded research-type projects; and
 - (2) As FTA determines otherwise in writing.
- C. Rights in Data and Copyrights.
- 1) Definition of "Subject Data" means recorded information:
 - a. Copyright. Whether or not copyrighted; and
 - b. Delivery. That is delivered or specified to be delivered under the Contract.
 - 2) Examples of Subject Data include, but are not limited to:
 - a. Computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information; but
 - b. Do not include financial reports, cost analyses or other similar information used for project administration.
 - 3) General Federal Restrictions. The following restrictions apply to all Subject Data first produced in the performance of STA's project supported by the Contract:
 - a. Prohibitions. The Contractor may not:
 - (1) Publish or reproduce any Subject Data in whole or in part, or in any manner or form; or
 - (2) Permit others to do so; but
 - b. Exceptions. The prohibitions of Rights in Data and Copyrights do not apply to:

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- (1) Publications or reproductions for STA's own internal use;
 - (2) An institution of higher learning;
 - (3) The portion of Subject Data that the Federal Government has previously released or approved for release to the public; or
 - (4) The portion of data that has the Federal Government's prior written consent for release.
- 4) Federal Rights in Data and Copyrights. The Contractor agrees that:
- a. License Rights. The Contractor must provide a license to its Subject Data to the Federal Government, which license is royalty-free, non-exclusive, and irrevocable.
 - b. Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes:
 - (1) Reproduce the Subject Data;
 - (2) Publish the Subject Data;
 - (3) Otherwise use the Subject Data; and
 - (4) Permit other entities or individuals to use the Subject Data.
- 5) Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the project to STA and its third-party participants. Therefore, the Contractor agrees that:
- a. Publicly Available Report. When the project is completed, it must provide a project report that FTA may publish or make available for publication on the Internet; and
 - b. Other Reports. It must provide other reports pertaining to the project that FTA may request.
 - c. Availability of Subject Data. FTA may make available to any FTA recipient or any of its third-party participants at any tier of the project, either FTA's copyright license to the Subject Data or a copy of the Subject Data, except as the Federal Government determines otherwise in writing.
 - d. Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA.
 - e. Incomplete Project. If the project is not completed for any reason whatsoever, all data developed under the project becomes Subject Data and must be delivered as the Federal Government may direct; but
 - f. Exception. Rights in Data and Copyrights Section 27.C does not apply to an adaptation of automatic data processing equipment or program that is both:
 - (1) For STA's use, and
 - (2) Acquired with FTA capital program funding.
- 6) License Fees and Royalties. As permitted by 49 CFR parts 18 and 19:
- a. License fees and royalties for copyrighted material or trademarks derived from project are program income; and
 - b. The Contractor has no obligation to the Federal Government with respect to those license fees or royalties, except:

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- (1) For compliance with 35 USC § 200 *et seq.*, which applies to patent rights developed under a federally funded research-type project; and
 - (2) As FTA determines otherwise in writing.
- 7) Hold Harmless. Upon request by the Federal Government, the Contractor agrees that:
- a. Violation by Contractor.
 - (1) If it willfully or intentionally violates any proprietary rights, copyrights or right of privacy, and
 - (2) Its violation occurs from any of the following uses of Project data: publication, translation, reproduction, delivery, use or disposition, then
 - (3) It will indemnify, save, and hold harmless against any liability, including costs and expenses of:
 - (a) The Federal Government's officers acting within the scope of their official duties;
 - (b) The Federal Government's employees acting within the scope of their official duties; and
 - (c) Federal Government's agents acting within the scope of their official duties; but
 - (4) Exceptions. The Contractor will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights if:
 - (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents; or
 - (b) State law. If indemnification is prohibited or limited by applicable State law.
- 8) Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either:
- a. Implies a license to the Federal Government under any patent; or
 - b. May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- 9) Data Developed Without Federal Funding or Support. The Contractor understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless:
- a. Protections. Rights in Data and Copyrights Sections 27.C.1) through 27.C.4) generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the project; and
 - b. Identification of Information. The Contractor understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential".
- 10) Requirements to Release Data. The Contractor understands and agrees that the Federal Government may be required to release project data and information STA submits to the Federal Government as required by:
- a. The Freedom of Information Act, 5 USC § 552;
 - b. Another applicable Federal law requiring access to project records;

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- c. DOT regulations, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, specifically 2 CFR § 200.211 or
- d. Other applicable Federal regulations and guidance pertaining to access to project records.

28. TRANSIT EMPLOYEE PROTECTIVE PROVISIONS

A. Applicability. All contracts.

B. Public Transportation Employee Protective Arrangements. The Contractor agrees that 49 USC § 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. DOL recognizes the following categories of arrangements:

- 1) DOL Certification. When the Contract involves public transportation operations and is financed with funding made available or appropriated for 49 USC §§ 5307, 5309, 5312, 5337 or 5339, as amended by MAP-21, or former 49 USC §§ 5308, 5309, 5312 or other provisions of law as required by the Federal Government, DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Contract. Therefore, the Contractor understands and agrees, and assures that Contractor, and any subcontractors, providing public transportation operations will agree, that:
 - a. It must carry out the Contract as provided in its DOL Certification, which contains the terms and conditions that DOL has determined to be fair and equitable to protect the interests of any employees affected by the Contract;
 - b. It must comply with 49 USC § 5333(b), and any future amendments thereto;
 - c. It will follow the DOL guidelines, *Guidelines, Section 5333(b), Federal Transit Law, 29 CFR part 215*, except as DOL determines otherwise in writing;
 - d. It must comply with the terms and conditions of the DOL certification of public transportation employee protective arrangements for the project, which certification is dated as identified on the Contract, including:
 - (1) Alternative comparable arrangements DOL has specified for the project;
 - (2) Any revisions DOL has specified for the project; or
 - (3) Both;
 - e. It must comply with the following documents and provisions incorporated by reference in and made part of the Contract for the project:
 - (1) The DOL certification of public transportation employee protective arrangements for the project, which certification is dated as identified on the Contract;
 - (2) The documents cited in that DOL certification for the project;
 - (3) Any alternative comparable arrangements that DOL has specified for the project; and
 - (4) Any revisions that DOL has specified for the project.
- 2) Special Warranty. When the project involves public transportation operations and is financed with funding made available or appropriated for 49 USC § 5311, as amended by MAP-21, for former 49 USC § 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, the Contractor understands and agrees, and assures that it, and any subcontractors, providing public transportation operations will agree, that:

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- a. It must comply with Federal transit laws, specifically 49 USC § 5333(b);
 - b. Follow the DOL guidelines, *Guidelines, Section 5333(b), Federal Transit Law*, 29 CFR part 215, except as DOL determines otherwise in writing;
 - c. It will comply with the DOL Special Warranty for its project that is most current on the date when it executed the Contract, and documents cited therein, including:
 - (1) Any alternative comparable arrangements DOL has specified for the project;
 - (2) Any revisions DOL has specified for the project; or
 - (3) Both;
 - d. It will comply with the following documents and provisions incorporated by reference in and made part of the Contract:
 - (1) The DOL Special Warranty for its project;
 - (2) Documents cited in that Special Warranty;
 - (3) Alternative comparable arrangements DOL specifies for the project; and
 - (4) Any revisions that DOL has specified for the project.
- 3) Special Arrangements for 49 USC § 5310 Projects. The Contractor understands and agrees, and assures that any subcontractors providing public transportation operations will agree, that although pursuant to 49 USC § 5310, and former 49 USC §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 USC § 5333(b) to subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions:
- a. FTA will make case-by-case determinations of the applicability of 49 USC § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds); and
 - b. FTA reserves the right to make other exceptions as it deems appropriate.

29. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

- A. Applicability. All contracts.
- B. This Contract is subject to the requirements of Title 49, CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is ten percent (10%). STA’s overall goal for DBE participation may be found at <https://www.spokanetransit.com/about-sta/disadvantaged-business-enterprise-program>.
- C. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as STA deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- D. If a separate contract goal has been established, Contractor is required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

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- E. If no separate Contract goal has been established, the successful Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- F. The Contractor is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than thirty (30) days after the Contractor's receipt of payment for that work from STA. In addition, the Contractor may not hold retainage from its subcontractors.
- G. The Contractor must promptly notify STA whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of STA.

30. PROMPT PAYMENT

- A. Applicability. All contracts.
- B. The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the Contractor receives from STA. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of STA. This clause applies to both DBE and non-DBE subcontracts.

31. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

- A. Applicability. All contracts.
- B. The provisions herein include, in part, certain Standard Terms & Conditions required by DOT, whether or not expressly stated in these contract provisions. All DOT-required contractual provisions, as stated in FTA Circular 4220.1F and the Master Agreement, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause STA to be in violation of FTA terms and conditions.

32. DRUG & ALCOHOL ABUSE AND TESTING

- A. Applicability. Operational service contracts performing safety-sensitive functions as defined under 49 CFR 655.4.
- B. The Contractor agrees to comply with the following Federal substance abuse regulations:
 - 1) Drug-Free Workplace. DOT regulations, *Drug-Free Workplace Requirements (Grants)*, 49 CFR Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 USC §§ 8103 *et seq.*; and
 - 2) 49 CFR part 655, Alcohol Misuse and Prohibited Drug Use in Transit Operations. FTA Regulations, *Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations*, 49 USC 5331, as amended by MAP-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

33. OTHER FEDERAL REQUIREMENTS:

- A. Full and Open Competition. In accordance with 49 USC § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

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- B. Prohibition Against Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the Contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.
- C. Conformance with ITS National Architecture. Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 USC Section 512 note and follow the provisions of FTA Notice, *FTA National Architecture Policy on Transit Projects*, 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.
- D. Access Requirements for Persons with Disabilities. Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.
- E. Notification of Federal Participation. To the extent required by law, in the announcement of any third-party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, Contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and express that amount of Federal assistance as a percentage of the total cost of the third-party contract.
- F. Interest of Members or Delegates to Congress. No members of, or delegates to, the US Congress shall be admitted to any share or part of this Contract nor to any benefit arising therefrom.
- G. Ineligible Contractors and Subcontractors. Any name appearing upon the Comptroller General's list of ineligible contractors for federally assisted contracts shall be ineligible to act as a subcontractor for Contractor pursuant to this Contract. If Contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, STA shall cancel, terminate, or suspend this Contract.
- H. Real Property. Any contract entered into shall contain the following provisions:
- 1) Contractor shall at all times comply with all applicable statutes and DOT regulations, policies, procedures, and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by MAP-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and the Master Agreement between STA and FTA, as they may be amended or promulgated during the term of this Contract.
 - 2) Contractor's failure to so comply shall constitute a material breach of this Contract.
- I. Environmental Justice. Except as the Federal Government determines otherwise in writing, the Contractor agrees to promote environmental justice by following:
- 1) Executive Order No. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, February 11, 1994, 42 USC § 4321 note, as well as facilitating compliance with that Executive Order; and

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- 2) DOT Order 5610.2, *Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 62 Fed. Reg. 18377, April 15, 1997; and
 - 3) The most recent and applicable edition of FTA Circular 4703.1, *Environmental Justice Policy Guidance for Federal Transit Administration Recipients*, August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.
- J. Environmental Protections. Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include:
- 1) the National Environmental Policy Act of 1969;
 - 2) the Clean Air Act;
 - 3) the Resource Conservation and Recovery Act;
 - 4) the comprehensive Environmental Response, Compensation and Liability Act; and
 - 5) environmental provisions with Title 23 USC, and 49 USC chapter 53.
- The EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.
- K. Geographic Information and Related Spatial Data. Any Contract activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.
- L. Geographic Preference. All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).
- M. Organizational Conflicts of Interest. The Contractor agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows:
- 1) When It Occurs. An organizational conflict of interest occurs when the project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage:
 - a. To that third-party or another third-party performing the project work, and
 - b. That impairs that third-party's objectivity in performing the project work, or
 - c. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions.
 - 2) Disclosure Requirements. Consistent with FTA policies, the Contractor must disclose to STA, and each of its subcontractors must disclose to the Contractor:
 - a. Any instances of organizational conflict of interest, or
 - b. Violations of federal criminal law, involving fraud, bribery or gratuity violations potentially affecting the federal award.
 - 3) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.
- N. Veterans Preference. As provided by 49 USC § 5325(k), to the extent practicable, the Contractor agrees and assures that each of its subcontractors:

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- 1) Will give a hiring preference to veterans, as defined in 5 USC § 2108, who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with federal assistance appropriated or made available for 49 USC chapter 53; and
- 2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

O. Safe Operation of Motor Vehicles.

- 1) Seat Belt Use. The Contractor agrees to implement Executive Order No. 13043, *Increasing Seat Belt Use in the United States*, April 16, 1997, 23 USC § 402 note, (62 Fed. Reg. 19217), by:
 - a. Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles: and
 - b. Including a “Seat Belt Use” provision in each third-party agreement related to the Contract.
- 2) Distracted Driving, Including Text Messaging While Driving. The Contractor agrees to comply with:
 - a. Executive Order No. 13513, *Federal Leadership on Reducing Text Messaging While Driving*, October 1, 2009, 23 USC § 402 note, (74 Fed. Reg. 51225);
 - b. DOT Order 3902.10, *Text Messaging While Driving*, December 30, 2009: and
 - c. The following DOT Special Provision pertaining to Distracted Driving:
 - (1) Safety. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle STA owns, leases or rents, or a privately-owned vehicle when on official business in connection with the Contract, or when performing any work for or on behalf of the Contract.
 - (2) Contractor Size. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
 - (3) Extension of Provision. The Contractor agrees to include this Section in all third-party agreements and encourage any third-party to comply with this section, and include this Section 33.O in each third-party agreement at each tier supported with federal assistance.

- P. Notification of Dispute, Breach, Default and Litigation. Contractor, its subconsultants and subcontractors, of any tier, shall promptly notify (through the Contractor) STA in writing of any current or prospective legal matter that may impact any contract that is considered a “covered transaction” in accordance with 2 CFR §§ 180.220 and 1200.220. The Contractor, its subconsultants and subcontractors, shall include the requirements of this section in all subcontracts with third parties at every tier.