COMMUNITY TRANSIT

Contract Submittal and Routing Sheet

Contract Routing No. 194-16

Routing number assigned by Admin Support Staff or Purchasing.

Name of Agency Entering into Contract with Community Transit:
Snohomish County

Contract Description:
Swift II Interlocal Agreement
Pedestrian Facility Improvements & Continuing Control in Support of Swift II BRT

<table>
<thead>
<tr>
<th>Length of Contract Term:</th>
<th>Expiration Date:</th>
<th>Project Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Cost: $2,400,000</td>
<td>Funding Source: Acct</td>
<td>Fund Dept ID Project</td>
</tr>
</tbody>
</table>

*Contract Revenue: $ *If contract has revenue, please check “Yes” in Copy to Accounting section below.

Type of Contract: ☒ Bid / Proposal
☐ Room Rental / Catering*
☐ ORCA
☒ Interlocal Agreement
☐ Professional/Personal Services Agreement
☐ Purchase (land, equipment, etc.)
☐ Maintenance Agreement
☐ Lease
☐ Ticket / Pass Outlet
☐ Labor Agreement
☐ Funding Agreement
☐ Other: ___

*Dept. Head, or their designee, have signature authority up to $10,000 for catering, room rentals, etc. for on-site and off-site meetings and events.

Board Action Required?
☐ Yes ☒ No

Date of Board Action: N/A

Copy to Accounting?
☒ Yes* ☐ No

Routing for Approval and Signatures

<table>
<thead>
<tr>
<th>Project Manager:</th>
<th>Supervisor / Manager:</th>
<th>Procurement &amp; Contracts Manager*:</th>
<th>Legal Counsel:</th>
<th>Department Head:</th>
<th>Chief Executive Officer:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roland Behee</td>
<td>June DeVol</td>
<td>Kunjan Dayal</td>
<td>Hendricks / Bennett</td>
<td>Joy Munkers</td>
<td>Emmett Heath</td>
</tr>
</tbody>
</table>

Date: 11/8/16
Date: 11/8/16
Date: 11/4/16
Date: 11/8/16
Date: 11-14-16

All contracts on behalf of the Corporation shall be signed by the Chief Executive Officer or designee.

Return Contract To: Roland Behee/Claudia McConnell

*The Manager of Procurement and Contracts is not required to review and concur on contracts valued at less than $10,000 for catering, room rentals, etc.

Routing for fully executed contracts:
1 original for CT contract files, including original contract routing sheet (return to Sara Gillis)
1 original for each signatory party with whom CT is contracting (copies provided by Project Manager)
* 1 copy of ALL REVENUE CONTRACTS to Lori Barnett, Accounts Receivable

Administration Department Form
Updated: 6/14/2016
To: Emmett Heath, Chief Executive Officer

From: Roland Behee, Strategic Planning Unit Manager

Date: November 7, 2016

Subject: Interlocal Agreement – Swift II, Snohomish County

BACKGROUND
The Swift II project requires an interlocal agreement with Snohomish County. Early in the design process for Swift II, the County approached Community Transit regarding an opportunity for partnership on pedestrian improvements that would mutually benefit the Swift line and County objectives for a more complete sidewalk network. Community Transit and County staffs coordinated to scope a project for sidewalk improvements around five Swift stations in the County portion of the Swift II corridor.

This ILA describes the framework for Community Transit and Snohomish County to complete the sidewalk improvements. The ILA also describes the County’s commitment to assume ownership and maintenance (a.k.a. "continuing control") of certain Swift II capital improvements as required by FTA. Key elements of the ILA include:

- County to design and construct sidewalks around five locations in the Swift II corridor.
- Sidewalk project scope is $2.4 million, a subset of the larger $73 million Swift II project:
  - $2 million to be funded from FTA Small Starts Grant for Swift II
  - $0.4 million to be funded by County from local County Road Fund
  - County to be responsible for 100% of any cost over $2.4 million
- County to comply with all applicable regulations as a sub-recipient of FTA funds
- County to provide assurance of continuing control of sidewalk ROW and improvements as well as Swift II station and roadway ROW and improvements in the County portion of the Swift II corridor.

STATUS
The draft ILA was reviewed by legal counsel from Community Transit, Snohomish County and FTA. The final ILA was approved by the County Council and signed by the County Executive on 10/31/2016. In order to meet the Swift II project schedule, FTA requires approval of the ILA by 11/30/2016.

BUDGET IMPACT
The $2.4 million scope of this project is fully incorporated into the Swift II project design, budget and schedule.

RECOMMENDATION
Chief Executive Officer to sign the attached ILA (2 copies) with Snohomish County concerning Pedestrian Facility Improvements and Continuing Control in support of the Swift II BRT line.
INTERLOCAL AGREEMENT CONCERNING PEDESTRIAN FACILITY
IMPROVEMENTS TO CERTAIN COUNTY ROADS AND CONTINUING
CONTROL IN SUPPORT OF THE NEW COMMUNITY TRANSIT SWIFT II
BUS RAPID TRANSIT LINE

This INTERLOCAL AGREEMENT CONCERNING PEDESTRIAN FACILITY
IMPROVEMENTS TO CERTAIN COUNTY ROADS AND CONTINUING CONTROL
IN SUPPORT OF THE NEW COMMUNITY TRANSIT SWIFT II BUS RAPID
TRANSIT LINE (the “Agreement”), is made and entered into this __ day of
______, 2016, by and between SNOHOMISH COUNTY, a political subdivision of the
State of Washington (the “County”), and COMMUNITY TRANSIT, a Washington Public
Transportation Benefit Area established in Snohomish County (“CT”), and collectively as
the Parties.

RECITALS

A. CT is proposing a new line of Bus Rapid Transit, called Swift II BRT that will
connect the Paine Field/Boeing Manufacturing/Industrial Center in Everett, with
the Regional Growth Center at Canyon Park, in Bothell and as depicted in Exhibit
B to this Agreement.

B. This Agreement is concerned with the County constructing and ensuring continuing
control of pedestrian facilities meeting the County’s Engineering Development &
Design Standards (EDDS) at five (5) locations along sections of certain County
roads, as identified in Exhibits A, B and D to this Agreement (the “Project”). The
pedestrian facilities will provide pedestrian access to Swift II BRT stations.

C. The Parties desire to ensure that the Project facilities, and the improvements to be
constructed by CT identified in green in the attached Exhibit D, are continually
available for use, in support of the new CT Swift II BRT line.

D. CT has applied for a Federal Transportation Administration (FTA) Section 5309
Bus and Bus Facilities/Capital Investment, Small Start Grant (“FTA Grant”) for its
new Swift II BRT line.

E. The estimated cost of the Project is Two Million Four Hundred Thousand Dollars
($2,400,000), of which, CT will reimburse the County up to 83.33% (not to exceed
Two Million Dollars ($2,000,000)). All other Project construction costs (estimated
to be Four Hundred Thousand Dollars ($400,000) will be allocated from County
funds.

F. The FTA-funded Project and this Agreement are subject to the Federal Transit
Administration (FTA) Master Agreement (22) dated October 1, 2015 (and as
amended), and Office of Management and Budget (OMB) and all other applicable
FTA regulations, circulars and guidance. Certain FTA Provisions and Forms are
attached as Exhibit C to this Agreement.

G. The County and CT anticipate the Project will be completed in 2018.
H. The County and CT agree that it will be more efficient and mutually beneficial to work together cooperatively in coordinating the construction of the Project.

I. While the County intends to construct the Project, the Parties agree and acknowledge that all promises made under this Agreement by each party to the other party are limited only to those activities involving the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and CT agree as follows:

1. Requirements of Interlocal Cooperation Act Chapter 39.34 RCW

1.1 Purpose of Agreement. The purpose and intent of this Agreement is to establish the roles and responsibilities of the County and CT to work together efficiently and effectively regarding the construction, financing and continuing control of the Project. This Agreement establishes the County as the entity responsible for all aspects of Project construction and inspection.

1.2 No Separate Entity Necessary. The parties agree that no separate legal or administrative entities are necessary to carry out this Agreement.

1.3 Ownership of Property. Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by either party in connection with the performance of this Agreement will remain the sole property of such party, and the other party shall have no interest therein. The improvements indicated in the attached Exhibit A and in green, in the attached Exhibit D, shall be owned and maintained by the County. The improvements indicated in blue, in the attached Exhibit D, shall be owned and maintained by CT.

1.4 Administrators. Each party to this Agreement shall designate an individual (an “Administrator”), which may be designated by title or position, to oversee and administer such party’s participation in this Agreement. The parties’ initial Administrators shall be the following individuals:

County’s Initial Administrator:  
Doug McCormick  
Program Planning Manager  
Snohomish County DPW  
3000 Rockefeller Avenue M/S 607  
Everett, Washington 98201  
425-388-6655  
DMcCormick@snoco.org

CT’s Initial Administrator:  
Roland Behee  
Strategic Planning Unit Manager  
Community Transit  
7100 Hardeson Road  
Everett, Washington 98203  
(425) 348-2368  
Roland.Behee@comctrans.org

Either party may change its Administrator at any time by delivering written notice of such party’s new Administrator to the other party.
2. **Effective Date and Duration**

2.1 **Effective Date.** As provided by RCW 39.34.040, this Agreement shall not take effect unless and until it has (i) been duly executed by both parties, and (ii) either filed with the County Auditor or posted on the County’s Interlocal Agreements website.

2.2 **Duration.** This Agreement shall remain in effect until all obligations of the parties are discharged, unless earlier terminated pursuant to the provisions of Section 9 below.

3. **County Responsibilities**

3.1 **Project Administration.** The County shall serve as the lead for the Project for purposes of administering the Project which includes, but is not limited to, construction, construction management, engineering, inspection, right of way acquisition, coordinating with CT, and for obtaining all required County permits and approvals, subject to the County Legislative Authority’s appropriation of funds necessary for this purpose.

3.2 **Right-of-way Acquisition.** Consistent with RCW 36.85.010, Chapter 8.08 RCW, and CT’s Real-estate Acquisition Management Plan (RAMP), which is incorporated herein by this reference, the County shall be responsible for identifying, paying for, acquiring, and maintaining all right-of-way necessary for the Project.

3.3 **Satisfactory Continuing Control.** Satisfactory continuing control is defined as the legal assurance that FTA-funded property will remain available to be used for its originally authorized purpose throughout its useful life or until disposition. The originally authorized purpose includes but is not limited to the safe and accessible operation and maintenance of the Swift II Bus Rapid Transit line. The County acknowledges the Federal interest in the pedestrian facilities identified in the attached Exhibit A, and improvements, identified in green in the attached Exhibit D, and the right-of-way and agrees that it will take no action which compromises or otherwise diminishes such interest. The County agrees to comply with all applicable Federal statutes, regulations, orders, certification and assurances, or other Federal law (collectively referred to as “Federal laws”), including, but not limited to, those set forth in the current FTA Master Agreement governing transit projects supported with Federal assistance awarded through the FTA.

3.4 **Project Design.** The County is responsible for the design and design costs of the Project, and will provide CT the Plans, Specifications and Estimates at the 90% design stage for CT’s review and comment.

3.5 **Invoicing.** The County shall invoice CT monthly, or on any other schedule that is mutually convenient and agreed to by the parties. The County will provide documentation for all actual costs associated with the Project. The County will invoice CT for 83.33% of the total costs incurred, not to exceed Two Million Dollars ($2,000,000). Invoices shall include all information required to comply with Federal Transit Authority requirements. The County will provide documentation of costs incurred through project completion even if no reimbursement is requested. All invoices and supporting documentation shall be sent to:

INTERLOCAL AGREEMENT CONCERNING PEDESTRIAN FACILITY IMPROVEMENTS TO CERTAIN COUNTY ROADS AND CONTINUING CONTROL IN SUPPORT OF THE NEW COMMUNITY TRANSIT SWIFT II BUS RAPID TRANSIT LINE
Kathryn Rasmussen
Grants Specialist
Community Transit
7100 Hardeson Road
Everett, Washington 98203

By way of example, those costs directly attributed may include, but are not limited to, the following types of cost components:

(a) Salaries, wages, benefits of all County employees engaged therein;
(b) Travel expenses, including mileage of County employees;
(c) Materials, when provided by the County;
(d) County-owned machinery and equipment, for which the County equipment rental rate shall be included in computing the cost of the machinery and equipment;
(e) Other costs and incidental expenses; including depreciation on County machinery and equipment;
(f) The full cost to the County of rental machinery and equipment, together with any operator furnished therewith;
(g) The cost of equipment, supplies, and related expenses when purchased by the County;
(h) The cost of identifying, acquiring, and paying for the right-of-way needed to construct the Project;
(i) Payment to consultants, sub-consultants, prime contractors or subcontractors for work performed on behalf of the County that is attributed to the Project; and
(j) The cost of permits and approvals required from other agencies.

3.6 Reports to CT. The County will provide CT with quarterly reports on the progress of the Project and all information necessary for CT to comply with FTA Regulations.

3.7 Project Control. The County has the express right to direct and control the activities of County staff and its contractors and sub-contractors in completing the Project in accordance with the specifications set out in this Agreement.

3.8 FTA Compliance. The County shall comply with all applicable terms and conditions prescribed by Community Transit as required by FTA, including but not limited to the FTA provisions outlined in Exhibit C to this Agreement in each contract and subcontract awarded under this Agreement. The County further agrees to comply with all other applicable Federal statutes, regulations, orders, certifications and assurances, or other Federal law (collectively referred to as “Federal laws”), including, but not limited to, those set forth in the current FTA Master Agreement governing transit projects supported with Federal assistance awarded through the FTA. FTA may
suspend, withdraw, delay, or withhold Federal funding from CT, in the event of the
County’s non-compliance.

3.9 New or amended federal laws, regulations, policies, and administrative
practices. New federal laws, regulations, policies, and administrative practices may be
established after the effective date of this Agreement that apply to this Agreement. To
achieve compliance with the new requirements, the County agrees, when notified by CT
of any such change, to accept all changed requirements that apply to this Agreement and
to require all contractors and subcontractors awarded work under this Agreement to
comply with the revised requirements as well.

4. Community Transit Responsibilities

4.1 CT will function as the Project Sponsor for the Project for purposes of
National Environmental Policy Act ("NEPA") and lead agency for State Environmental
Policy Act ("SEPA") review, if and to the extent applicable.

4.2 Covenant to Cooperate. CT covenants to the County that it shall cooperate
with the County to the extent reasonably necessary for accomplishing the Project. CT shall
make its personnel available to the County at reasonable times and upon reasonable
advance notice, for purposes of facilitating the County’s design and construction of the
Project.

4.3 Right-of-way Acquisition Approval. CT must review and approve final
right-of-way acquisitions per the CT approved Real-estate Acquisition Management Plan
(RAMP), which is incorporated herein by this reference.

4.4 Reimbursement of County Costs. Unless CT delivers written notice to the
County disputing the amount of a particular invoice, CT shall make payment on all invoices
submitted by the County within thirty (30) days following receipt by CT of said invoices.

4.5 Community Transit’s Monitoring Obligation. CT is responsible for
informing County of applicable FTA requirements and is responsible for monitoring and
ensuring the County’s compliance with FTA laws, regulations, requirements, policies, and
administrative practices with respect to any property with a Federal interest.

4.6 Project Review. CT shall only have the right to ensure the Project is
completed and to either request or audit Project records but shall not have the right to direct
and control the activities of County staff and its contractors and sub-contractors.

4.7 Review of Plans, Specifications, and Estimates. CT will review and either
approve or provide comments to the County within ten (10) working days of receiving the
County Plans, Specifications and Estimates.

5. Indemnification/Hold Harmless

5.1 County’s Indemnification of CT. The County shall indemnify, defend and
hold CT harmless from and against all liabilities, suits, losses, costs, damages, claims,
expenses, penalties or charges, including, without limitation, reasonable attorneys’ fees and
disbursements, that CT may incur or pay out by reason of: (i) any accidents, damages or
injuries to persons or property occurring in, on, about or around the Project Area due to or
INTERLOCAL AGREEMENT CONCERNING PEDESTRIAN FACILITY
IMPROVEMENTS TO CERTAIN COUNTY ROADS AND CONTINUING CONTROL
IN SUPPORT OF THE NEW COMMUNITY TRANSIT SWIFT II BUS RAPID TRANSIT LINE
arising out of the County’s performance pursuant to this Agreement, but only to the extent such accidents, damages or injuries are due to any negligent or wrongful act or omission of the County; or (ii) any breach or Default (as such term is defined in Section 8.1 below) by the County under this Agreement.

5.2 CT's Indemnification of County. CT shall indemnify, defend and hold the County harmless from and against all liabilities, suits, losses, costs, damages, claims, expenses, penalties or charges, including, without limitation, reasonable attorneys’ fees and disbursements, that the County may incur or pay out by reason of: (i) any accidents, damages or injuries to persons or property occurring in, on or around the Project Area during the term of this Agreement, but only to the extent the same are caused by any negligent or wrongful act of CT; or (ii) any breach or Default (as such term is defined in Section 9.1 below) of CT under this Agreement.

5.3 Waiver of Immunity under Industrial Insurance Act. The indemnification provisions of Section 5.1 and Section 5.2 above are specifically intended to constitute a waiver of each party’s immunity under Washington’s Industrial Insurance Act, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor’s employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

5.4 Survival. The provisions of this Section 5 shall survive the expiration or earlier termination of this Agreement.

6. Insurance

Each Party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and/or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying party to the indemnified party(s).

7. Compliance with Laws

In the performance of its obligations under this Agreement, each party shall comply with all applicable federal, state, and local laws, rules, and regulations.

8. Default and Remedies

8.1 Default. If either Party fails to perform any act or obligation required by it hereunder, the other party shall deliver written notice of such failure to the non-performing party. The non-performing party shall have thirty (30) days after its receipt of such notice in which to correct its failure to perform the act or obligation at issue, after which time it shall be in default (“Default”) under this Agreement; provided, however, that if the non-performance is of a type that could not reasonably be cured within said thirty (30) day period, then the non-performing party shall not be in Default if it commences cure within said thirty (30) day period and thereafter diligently pursues cure to completion.
8.2 Remedies. In the event of a party’s Default under this Agreement, then
after giving notice and an opportunity to cure pursuant to Section 8.1 above, the non-
Defaulting party shall have the right to exercise any or all rights and remedies available to
it in law or equity.

9. Early Termination

9.1 Notice. Except as provided in Section 9.2 below, either party may
terminate this Agreement at any time, with or without cause, upon not less than thirty (30)
days written notice to the other party. The termination notice shall specify the date on
which the Agreement shall terminate.

9.2 Lack of Funding. This Agreement is contingent upon governmental
funding and local legislative appropriation. In the event that funding from any source is
withdrawn, reduced, limited, or not appropriated after the effective date of this Agreement,
this Agreement may be terminated by either party immediately by delivering written notice
to the other party. The termination notice shall specify the date on which the Agreement
shall terminate.

9.3 Payment of Invoices after Termination. In the event this Agreement is
terminated by either party, CT shall be responsible for paying all invoices submitted by the
County up to sixty (60) days beyond the date of termination. Provided, the County shall
only invoice for that work that was completed up to the date of termination.

10. Notices

All notices required to be given by any party to the other party under this Agreement
shall be in writing and shall be delivered either in person, by United States mail, or by
electronic mail (email) to the applicable Administrator or the Administrator’s designee.
Notice delivered in person shall be deemed given when accepted by the recipient. Notice
by United States mail shall be postage prepaid, and addressed to the Administrator, or their
designee, at the addresses set forth in Section 1.4 of this Agreement and shall be deemed
given as of the date the notice is received by the recipient. Notice delivered by email shall
be deemed given as of the date and time received by the recipient.

11. Miscellaneous

11.1 Entire Agreement; Amendment. This Agreement constitutes the entire
agreement between the parties regarding the subject matter hereof, and supersedes any and
all prior oral or written agreements between the parties regarding the subject matter
contained herein. This Agreement may not be modified or amended in any manner except
by a written document signed by both parties. Any amendment to this Agreement that does
not increase the cost to the County may be approved administratively by the County
Director of Public Works.

11.2 Governing Law and Venue. This Agreement shall be governed by and
enforced in accordance with the laws of the State of Washington. The venue of any action
11.3 **Interpretation.** This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

11.4 **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

11.5 **No Waiver.** A party’s forbearance or delay in exercising any right or remedy with respect to a Default by the other party under this Agreement shall not constitute a waiver of the Default at issue. Nor shall a waiver by either party of any particular Default constitute a waiver of any other Default or any similar future Default.

11.6 **No Assignment.** This Agreement shall not be assigned, either in whole or in part, by either party without the express written consent of the other party, which may be granted or withheld in such party’s sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a Default under this Agreement.

11.7 **Warranty of Authority.** Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign this Agreement.

11.8 **No Joint Venture.** Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the parties.

11.9 **No Third Party Beneficiaries.** This Agreement and each and every provision hereof is for the sole benefit of CT and the County. No other persons or parties shall be deemed to have any rights in, under, or to this Agreement.

11.10 **Execution in Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

11.11 **County Non-discrimination.** It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington’s Law against Discrimination, Chapter 49.60
RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

CT shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by CT of CT’s compliance with the requirements of Chapter 2.460 SCC. If CT is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect CT’s obligations under other federal, state, or local laws against discrimination.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

COUNTY

By

Marcia Isenberg
Deputy Executive

A Dave Somers
County Executive

COMMUNITY TRANSIT

By

Emmett Heath
Chief Executive Officer

Approved as to Form:

Deputy Prosecuting Attorney

COUNCIL USE ONLY

Approved: 10.31.16
Docfile: D-6

[The remainder of this page is intentionally left blank.]
EXHIBIT B

Community Transit Swift II BRT Project Narrative and Map

Swift II BRT - Project Identification

Located in southwestern Snohomish County, Washington, the Swift II line will connect the Paine Field/Boeing Manufacturing/Industrial Center in Everett, with the Regional Growth Center at Canyon Park, Bothell. The alignment is 12.3 miles in length, running from a new northern Transit Center (Seaway Transit Center) to the existing Canyon Park Park & Ride. The Swift II Project includes construction of a new Transit Center for the northern terminus, lane widening at the approaches to I-5 for transit priority, construction of 32 iconic Swift stations, intersection and sidewalk improvements to increase access, and the purchase of 13 branded 60-foot articulated vehicles.

Setting

The Swift II BRT Project alignment is shown in Figure 1 below. The northern end of the corridor is anchored by the Paine Field/Boeing Everett Manufacturing and Industrial Center (MIC), home to approximately 42,000 covered jobs, the world’s largest manufacturing building, and the Paine Field Airport, Snohomish County’s major airport. The Swift II BRT Project will construct a new Transit Center at Seaway Blvd and 75th Street (Everett, WA) on land adjacent to the Boeing manufacturing plant. From the northern terminus, the route will travel southbound along Seaway Blvd to State Route 526, then use the auxiliary lanes along SR 526 to Airport Road. From there, the route will travel south along Airport Road/128th Street utilizing right side HOV and Business Access Transit (BAT) lanes approaching Interstate 5 (I-5). This northern portion of the route provides access to numerous businesses surrounding the Paine Field airport facility, crosses the existing north/south Swift BRT route on SR 99 for convenient transfers, and accesses the Mariner Park & Ride facility on 4th Avenue. The route will continue across I-5 eastbound along 128th/132nd Street, providing access to the McCollum Park & Ride, then continuing south on 16th Avenue SE to connect with SR 527 (Bothell-Everett Highway). Traveling south on SR 527 past Mill Creek Town Center and Thrashers Corner, the route will terminate at the existing Canyon Park Park & Ride regional transit facility located within the designated regional growth center at Canyon Park/Bothell.

The corridor has relatively dense development with multiple activity centers of both employment and residential use, and intersects several key regional roadways (i.e. SR 99, I-5, SR 527, and I-405). The alignment connects with vital transit services, including the existing Swift line (SR 99) local service, and multiple regional express and commuter routes to downtown Seattle, Bellevue, and other parts of the region.

Purpose of the Swift II BRT Project

The Swift II BRT Project will implement the first high capacity east-west crossing of I-5 in south Snohomish County, establishing a critical mobility link within the corridor. Swift II will provide high capacity transit service to underserved employment bases, connecting dense residential areas with two designated regional growth centers. Swift II will also further the goals of Community Transit’s adopted Long Range Transit Plan by creation of a network of Swift BRT service on Transit Emphasis Corridors, supporting the overarching Community Transit goal of “Think Transit First”.
Summary
The Swift II BRT Project will be the second in a system of BRT routes provided by Community Transit. Swift BRT is a proven mode and currently carries 1 in 6 Community Transit customers. The Swift II alignment from the Paine Field/Boeing Manufacturing/Industrial Center to the Canyon Park Regional Growth Center is currently a strong transit market with robust employment and population. Current congestion and lack of mobility options also creates untapped latent demand for additional customers. Swift II is a service that can be easily and quickly implemented to provide a high capacity, high quality transportation option.

Figure 1
EXHIBIT C – FTA PROVISIONS AND FORMS

Discussion: The attached FTA provisions and forms are customized for Snohomish County’s use in its construction contract(s) for the Project. As requested by Snohomish County, the FTA provision and form package is designed to be an added insert for Snohomish County procurement (bid) documents and follows the FTA checklist in this attachment.

All contractors and subcontractors working on the Project are subject to Swift II BRT project-wide provisions contained in Community Transit’s Swift II Project Management Plan (as required by the FTA), as well as FTA contract provisions. An FTA checklist is provided for Snohomish County’s contract management.

Reference:
FTA Master Agreement (22) October 1, 2015 (as amended)
FTA Circular 5010.1D (as amended
FTA Circular 4220.1F (as amended
FTA Best Practices Procurement Manual (BPPM)

Required Forms:
- Certificate of Nondebarment/Suspension (Prime Contractor and All Subcontractors)
- Certification Regarding Conflict of Interest (Prime Contractor and All Subcontractors)
- Certification Regarding Lobbying By Contractor (Prime Contractor), with Disclosure of Lobbying Activities
- Certification Regarding Lobbying By Subcontractor (All Subcontractors)
- Buy America Certification (FTA) (Prime Contractor and All Subcontractors)

There are three subject areas required by the FTA that Snohomish County will include in its contract(s), using its own contract provisions:

a. Protest Procedures (FTA BPPM Chapter 11.1)
b. Termination (FTA BPPM Appendix A.21)
c. Breaches and Dispute Resolution (FTA BPPM Appendix A.25)
1. INCORPORATION OF FTA TERMS

The preceding and following provisions include, in part, certain Standard Terms and Conditions required by US DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by US DOT, as set forth in FTA Circular 4220.1F dated November 1, 2008, 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 any other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Snohomish County requests which would cause Snohomish County to be in violation of the FTA terms and conditions.

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

2. NO OBLIGATION BY THE FEDERAL GOVERNMENT

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

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

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

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, Program Fraud Civil Remedies, 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certified or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act.
of 1986 on the Contractor to the extent the federal government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the federal government deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who shall be subject to the provisions.

4. FEDERAL CHANGES

Any proposed change in this contract shall be submitted to Snohomish County for its prior approval. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives. Contractor's failure to so comply shall constitute a material breach of this contract.

5. ENERGY CONSERVATION REQUIREMENTS

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

6. CIVIL RIGHTS REQUIREMENTS

The following requirements apply to the underlying contract:

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

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal
Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq.,
(which implement Executive Order No. 11246, "Equal Employment
Opportunity," as amended by Executive Order No. 11375, "Amending Executive
note), and with any applicable Federal statutes, executive orders, regulations, and
Federal policies that may in the future affect construction activities undertaken in
the course of the Project. The Contractor agrees to take affirmative action to
ensure that applicants are employed, and that employees are treated during
employment, without regard to their race, color, creed, national origin, sex, 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 Contractor agrees to comply
with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment
5332, the Contractor agrees to refrain from discrimination against present and
prospective employees for reason of age. In addition, the Contractor agrees to
comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with
Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will
comply with the requirements of U.S. Equal Employment Opportunity
Commission, "Regulations to Implement the Equal Employment Provisions of the
Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment
of persons with disabilities. In addition, the Contractor agrees to comply with any
implementing requirements FTA may issue.

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

7. FLY AMERICA REQUIREMENTS

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

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

9. ACCESS TO RECORDS AND REPORTS

Snohomish County, Community Transit, FTA, the Comptroller General of the United States, or any of their duly authorized representatives, shall, until six years after final payment under this contract or for any shorter period specified, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers or other records involving transactions related to this contract, and may request copies of specific documents at no charge to Snohomish County.

If it is apparent that there will be substantial subcontracting, your organization shall include clauses that impose these same requirements on any subcontractor. Thus, there shall be a clause requiring submission of cost and pricing data by subcontractors, a clause permitting examination of cost and pricing data before award and a clause permitting examination of records during the administration of the contract for all subcontractors.

Failure to include the above three clauses could subsequently result in:

A. The Contractor's failure to submit cost data; or,

B. Refusal by the Contractor to provide such data; or

C. Refusal by the Contractor to allow the grantees access to the records of the Contractor.

Also, failure to include the examination of records provision in negotiated contracts is a violation of FTA Circular 4220.1F.

10. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (CONSTRUCTION)

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

B. Violation; liability for unpaid wages; liquidated damages
In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

C. Withholding for unpaid wages and liquidated damages
Snohomish County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

D. Subcontracts
The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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

12. DISCLOSURE OF LOBBYING ACTIVITIES


13. BUY AMERICA

A. The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

B. A bidder or offeror shall submit to Snohomish County the appropriate Buy America certification (Attachment I) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

14. CLEAN AIR REQUIREMENTS

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to Snohomish County and understands and agrees that Snohomish County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

15. CLEAN WATER REQUIREMENTS

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

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

16. DISADVANTAGED BUSINESS ENTERPRISES (DBE) DEFINITIONS

A. DBE is an incorporated or unincorporated small business concern or joint venture, as defined by Section 3 of the Small Business Act and implementing regulations, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of $14 million over the previous three fiscal years. The Secretary shall adjust this figure from time to time for inflation. A DBE must be certified by the Washington State Office of Minority and Women’s Business Enterprises.

1. At least 51 percent of which is owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and,

2. The management and daily business operations of which are controlled by the socially and economically disadvantaged individuals who own the business.

B. Socially and Economically Disadvantaged Individuals are those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:

1. Black Americans - which includes persons having origins in any of the black racial groups of Africa;

2. Hispanic Americans - which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
1. **Native Americans** - which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;

2. **Asian-Pacific Americans** - which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories or the Pacific and the Northern Marianas;

3. **Asian-Indian Americans** - which includes persons whose origins are from India, Pakistan and Bangladesh;

4. **Women** - regardless of race, ethnicity or origin; and,

5. **Other** - individuals found to be socially and economically disadvantaged by the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.

17. **DISADVANTAGED BUSINESS ENTERPRISES**

Snohomish County will be receiving payments for this project from Community Transit. This project is subject to 49 CFR 26 - *Participation by Disadvantaged Business Enterprises in Department Of Transportation Financial Assistance Programs*. As required, Community Transit has established a race-neutral DBE Goal that Snohomish County will pursue. These requirements flow down to all contractors and subcontractors.

A. This contract is subject to the requirements of 49 CFR 26. The national goal for participation of DBEs is 10%. Community Transit’s race-neutral goal for DBE participation is 3%.

B. Snohomish County will be collecting required reports from contractors and subcontractors concerning DBE participation obtained through race-neutral means throughout the period of performance.

18. **INFORMATION REGARDING DBES**

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

Office of Minority and Women’s Business Enterprises
P.O. Box 41160
Olympia, WA 98504-1160
(800) 208-1064 Toll Free
(360) 586-7079 Fax

Internet: [http://www.omwbe.wa.gov/](http://www.omwbe.wa.gov/)

19. **PROCEDURES BETWEEN AWARD AND EXECUTION**

After award of the contract, the successful bidder/proposer shall provide the following additional information:
A list of all firms who submitted a bid or quote in an attempt to participate in this project whether they were successful or not. Include the correct business name, federal employer identification number (optional), and a mailing address.

20. REQUIRED DBE CONTRACT CLAUSES

Pursuant to Community Transit's DBE policy, the following clauses will apply to all Contractors and Subcontractors:

A. Contract Assurance

The contractor shall place the following clause in all subcontracts:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

B. Prompt Payment

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty days from the receipt of each payment the prime contractor receives from Snohomish County. The prime contractor further agrees to return retainage payments to each subcontractor within thirty days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval by Snohomish County. This clause applies to both DBE and non-DBE subcontractor.

21. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

The Contractor, including any of its officers or holders of a controlling interest, is obligated to inform Snohomish County whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should the Contractor be included on such a list during the performance of this project, it shall so inform Snohomish County.

22. DAVIS BACON ACT AND COPELAND ACT

The Davis-Bacon Act and Copeland Act will be applicable to this contract. Current Davis-Bacon wage rates are appended to these General Conditions, are incorporated herein as can be found at the following website (for Snohomish County, Washington):

http://www.access.gpo.gov/davisbacon/allstates.html
The minimum wage rate to be paid workers will be the higher rate afforded by either the Washington State Prevailing Wages or Federal Davis-Bacon Wage Rates.

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and
(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under
the contract shall be classified in conformance with the wage determination. The
contracting officer shall approve an additional classification and wage rate and
fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by
a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a
reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the
classification (if known), or their representatives, and the contracting officer agree
on the classification and wage rate (including the amount designated for fringe
benefits where appropriate), a report of the action taken shall be sent by the
contracting officer to the Administrator of the Wage and Hour Division,
Employment Standards Administration, Washington, DC 20210. The
Administrator, or an authorized representative, will approve, modify, or
disapprove every additional classification action within 30 days of receipt and so
advise the contracting officer or will notify the contracting officer within the 30-
day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the
classification or their representatives, and the contracting officer do not agree on
the proposed classification and wage rate (including the amount designated for
fringe benefits, where appropriate), the contracting officer shall refer the
questions, including the views of all interested parties and the recommendation of
the contracting officer, to the Administrator for determination. The Administrator,
or an authorized representative, will issue a determination within 30 days of receipt
and so advise the contracting officer or will notify the contracting officer within
the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined
pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all
workers performing work in the classification under this contract from the first
day on which work is performed in the classification.

(2) Withholding – Snohomish County 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 the contractor under this contract or any other Federal
contract with the same prime contractor, or any other federally-assisted contract
subject to Davis-Bacon prevailing wage requirements, which is held by the same
prime contractor, so much of the accrued payments or advances as may be
considered necessary to pay laborers and mechanics, including apprentices,
trainees, and helpers, employed by the contractor or any subcontractor the full
amount of wages required by the contract. In the event of failure to pay any
laborer or mechanic, including any apprentice, trainee, or helper, employed or
working on the site of the work (or under the United States Housing Act of 1937
or under the Housing Act of 1949 in the construction or development of the
project), all or part of the wages required by the contract, Snohomish County may,
after written notice to the contractor, sponsor, applicant, or owner, take such
action as may be necessary to cause the suspension of any further payment,
advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto
shall be maintained by the contractor during the course of the work and preserved
for a period of three years thereafter for all laborers and mechanics working at the
site of the work (or under the United States Housing Act of 1937, or under the
Housing Act of 1949, in the construction or development of the project). Such
records shall contain the name, address, and social security number of each such
worker, his or her correct classification, hourly rates of wages paid (including
rates of contributions or costs anticipated for bona fide fringe benefits or cash
equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-
Bacon Act), daily and weekly number of hours worked, deductions made and
actual wages paid. Whenever the Secretary of Labor has found under 29 CFR
5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any
costs reasonably anticipated in providing benefits under a plan or program
described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall
maintain records which show that the commitment to provide such benefits is
enforceable, that the plan or program is financially responsible, and that the plan
or program has been communicated in writing to the laborers or mechanics
affected, and records which show the costs anticipated or the actual cost incurred
in providing such benefits. Contractors employing apprentices or trainees under
approved programs shall maintain written evidence of the registration of
apprenticeship programs and certification of trainee programs, the registration of
the apprentices and trainees, and the ratios and wage rates prescribed in the
applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract
work is performed a copy of all payrolls to Snohomish County. The payrolls
submitted shall set out accurately and completely all of the information required
to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This
information may be submitted in any form desired. Optional Form WH-347 is
available for this purpose and may be purchased from the Superintendent of
Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing
Office, Washington, DC 20402. The prime contractor is responsible for the
submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of
Compliance," signed by the contractor or subcontractor or his or her agent who
pays or supervises the payment of the persons employed under the contract and
shall certify the following:

(1) That the payroll for the payroll period contains the information required to be
maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such
information is correct and complete;
(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) **Apprentices** - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in
excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than
the applicable predetermined rate for the work performed until an acceptable
program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and
journeymen under this part shall be in conformity with the equal employment
opportunity requirements of Executive Order 11246, as amended, and 29 CFR
part 30.

(iv) Apprentice Utilization Report – Standard Apprentice Utilization Reports are
required and shall be submitted by the Contractor with each pay application.

(5) Compliance with Copeland Act requirements - The contractor shall comply
with the requirements of 29 CFR part 3, which are incorporated by reference in
this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any
subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such
other clauses as the Federal Transit Administration may by appropriate
instructions require, and also a clause requiring the subcontractors to include these
clauses in any lower tier subcontracts. The prime contractor shall be responsible
for the compliance by any subcontractor or lower tier subcontractor with all the
contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29
CFR 5.5 may be grounds for termination of the contract, and for debarment as a
contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings
and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR
parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor
standards provisions of this contract shall not be subject to the general disputes
clause of this contract. Such disputes shall be resolved in accordance with the
procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7.
Disputes within the meaning of this clause include disputes between the
contractor (or any of its subcontractors) and Snohomish County, the U.S.
Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor
certifies that neither it (nor he or she) nor any person or firm who has an interest
in the contractor's firm is a person or firm ineligible to be awarded Government
contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible
for award of a Government contract by virtue of section 3(a) of the Davis-Bacon
Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal

Closeout and final payment of this project may be contingent upon
completion and resolution of a Davis-Bacon Prevailing Wage audit.
23. PAYMENT, PERFORMANCE, RETAINAGE AND BID BONDS

23.1 Bid Bond: All Bids shall be accompanied by a deposit in cash, certified check, cashier’s check or surety bond in an amount equal to five percent (5%) of the amount of such final cost Bid. Should the successful Bidder fail to enter into a contract and furnish satisfactory performance and payment bonds, the Bid deposit shall be forfeited.

23.2 Payment and Performance Bonds: Contractor shall furnish Snohomish County, at Contractor’s cost, on the date of execution of the Contract, with payment, and performance bonds each in the amount of 100% of the total Contract sum, including all change orders and sales tax, conditioned upon Contractor faithfully performing all of its obligations under this Contract within the time prescribed therein, including payment of all subcontractors and materialmen, taxes imposed on Contractor under Title 82 RCW, and liquidated damages. The bond shall be issued by a corporate surety acceptable to Snohomish County and licensed to do business in the State of Washington. In the event the surety becomes unacceptable to Snohomish County during the course of construction, Contractor shall, upon Snohomish County’s written request and at contractor’s sole cost and expenses obtain a payment, performance and warranty bond from another surety acceptable to Snohomish County.

23.3 Retainage Bond: Contractor shall furnish Snohomish County a retainage bond of five (5) percent of the contract cost to be held in lieu of actual retainage. The bond shall be issued by a corporate surety acceptable to Snohomish County and licensed to do business in the State of Washington. In the event the surety becomes unacceptable to Snohomish County during the course of construction, Contractor shall, upon Snohomish County’s written request and at contractor’s sole cost and expenses obtain a retainage bond from another surety acceptable to Snohomish County. Since retainage is not being held, the prime contractor shall not hold retainage on any tier subcontractor.
EXHIBIT D

Swift II BRT Project – Snohomish County Ownership & FTA Continuing Control

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

Project elements to be owned and maintained by Snohomish County include:

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

Elements shaded in green on the attached aerial map plans.

<table>
<thead>
<tr>
<th>Location</th>
<th>Direction</th>
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<tbody>
<tr>
<td>SR 527 at SR 524 (208th St SE)</td>
<td>Northbound</td>
</tr>
<tr>
<td>SR 527 at 196th St SE</td>
<td>Northbound</td>
</tr>
<tr>
<td>SR 527 at 196th St SE</td>
<td>Southbound</td>
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<tr>
<td>SR 527 at 180th St SE</td>
<td>Northbound</td>
</tr>
<tr>
<td>SR 527 at 180th St SE</td>
<td>Southbound</td>
</tr>
<tr>
<td>128th St SW at 4th Ave SE</td>
<td>Northbound/Westbound</td>
</tr>
<tr>
<td>128th St SW at 4th Ave SE</td>
<td>Southbound/Eastbound</td>
</tr>
<tr>
<td>Airport Road at E Gibson Rd</td>
<td>Northbound/Westbound</td>
</tr>
<tr>
<td>Airport Road at E Gibson Rd</td>
<td>Southbound/Eastbound</td>
</tr>
<tr>
<td>Airport Road at 100th St SW</td>
<td>Northbound</td>
</tr>
<tr>
<td>Airport Road at 100th St SW</td>
<td>Southbound</td>
</tr>
<tr>
<td>128th St SW at I-5 (west of I-5)</td>
<td>Southbound/Eastbound</td>
</tr>
</tbody>
</table>