

INTERAGENCY AGREEMENT BETWEEN
PORT OF EVERETT, WASHINGTON

AND

COMMUNITY TRANSIT, WASHINGTON

This Agreement is made and entered into by and between the Port of Everett, Washington, hereinafter referred to as "Port" and Snohomish County Public Transportation Benefit Area Corporation dba Community Transit and hereafter referred to as "Community Transit", each party having been duly organized and now existing under the laws of the State of Washington.

WHEREAS, the Port has entered into a job order contract with Burton Construction, Inc.; ("BCI") as authorized by Chapter 39.10, Revised Code of Washington, titled "Agreement for Job Order Contracting – General Construction Services Project No. AD-GN-2014-05.1" dated November 17, 2014 ("BCI Contract"); and

WHEREAS, Community Transit wishes to utilize, in part, the terms and conditions of the BCI Contract to perform various Community Transit job order projects on Community Transit facilities; and

WHEREAS, the Port desires to enter into this Agreement with Community Transit to allow Community Transit to utilize the terms and conditions of the BCI Contract; and

WHEREAS, the parties hereto have determined that they have the authority to enter into this Agreement in accordance with Washington law (RCW 39.34) and their respective policies and procedures, as amended.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual promises and covenants herein contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. STATEMENT OF WORK

The Port shall pursue a no cost change to the BCI Agreement requesting that BCI provide Community Transit with job order construction services on Community Transit facilities directly to Community Transit on the same terms and conditions of the BCI Agreement, except that the obligations owed to the Port under such agreement will be owed by BCI to Community Transit, including but not limited to obligations to provide performance and payment bonds for work performed and insurance endorsements that name Community Transit as additional insured. A true and correct copy of the BCI Agreement is attached hereto as Attachment "A". BCI shall directly invoice Community Transit for any and all such work provided, and all work orders shall state "All work described herein provided directly to Community Transit by BCI are subject to the terms and conditions of the 'Agreement for Job Order Contracting – General Construction Services Project No. AD-GN-2014-05.1' contract, dated November 17, 2014." The Port is not a party to, nor responsible for, performance of or payment for the work described in this invoice." Community Transit shall issue all job orders and perform all fiscal and program responsibilities for the projects to be identified by Community Transit.

Community Transit shall not issue any work orders under the BCI Contract until such changes have been executed. In the event that the changes are not executed, this Agreement shall terminate, and neither party shall bear any additional obligations or liabilities hereunder, and each party shall bear its own costs associated with the Agreement

2. TERMS AND CONDITIONS

Community Transit and Port agree that any work performed for Community Transit by BCI and its respective subcontractors under this Agreement shall be conducted in accordance with the provisions of the BCI Contract. Insurance Indemnification and Performance/Payment bonds as specified in the BCI Contract shall insure to the benefit of Community Transit on work orders issued by Community Transit.

3. PERIOD OF PERFORMANCE

The period of performance of this Agreement shall commence when this Agreement is properly signed by both parties and be completed no later than November 15, 2017, unless mutually changed by Amendment to this Agreement.

4. COMPENSATION; PAYMENT PROCEDURE

The total value of all work orders issued by the Community Transit BCI shall not exceed \$1,000,000. BCI shall directly invoice Community Transit and Community Transit shall directly pay BCI pursuant to the payment and compensation terms identified within the BCI Contract, respectively.

5. RECORDS MAINTENANCE

Port, Community Transit, and their contractors, subcontractors, sub-consultants, representatives and employees shall each maintain books, records, documents, and other evidence for six (6) years after the expiration of this Agreement (unless another period of time is specified in applicable records retention policies in which case such policies shall prevail). Unless an applicable exception to public review or a privilege applies, these records shall be subject to inspection, review, or audit by personnel of both parties' other personnel duly authorized by either party, or the Washington State Auditor.

6. CONTRACT MANAGEMENT

(a) Maija Lampinen will be the Port Representative for all communications regarding this Agreement. The Port Representative shall be responsible for monitoring the performance of this Agreement and fulfilling the Port's responsibilities as addressed herein.

(b) Kunjan Dayal will be Community Transit's Representative for all communications regarding this Agreement. The Community Transit Representative shall be responsible for monitoring the performance of this Agreement and fulfilling Community Transit's responsibilities as addressed herein.

(c) Jim Anderson shall serve as the BCI Representative for all communications regarding the job order construction services as addressed herein.

7. INDEMNIFICATION AND HOLD HARMLESS

Community Transit specifically acknowledges that the Port shall have no liability or responsibility for

the performance of BCI with respect to Community Transit job orders. Community Transit shall defend and hold the Port harmless from any and all claims, suits, losses, costs (including attorney's fees), and/or damages of any kind whatsoever arising out of or in any way resulting from Community Transit's issuance of job orders and performance by any party pursuant to same facilitated by this Agreement. The Port makes no representations or warranties of any kind, including, without limitation regarding the contractors, performance, or terms and conditions of the BCI Contract.

8. AMENDMENTS TO AGREEMENT

Port and Community Transit may mutually amend this Agreement. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind the parties or their respective delegates.

9. TERMINATION

Either party may terminate this Agreement upon thirty (30) days written notification. If this is so terminated, the terminating party shall be liable only for performance in accordance with the terms of this Agreement for performance rendered prior to the effective date of termination.

10. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any parties hereto.

PORT OF EVERETT

By:

Les Reardanz

COMMUNITY TRANSIT

By:

Emmett Heath
Emmett Heath, Chief Executive Office

Approved as to form:

By:

Les Reardanz

Title: Chief Executive Officer

Approved as to form:

By:

[Signature]

Title: General Counsel

Attachment A

PORT OF EVERETT
JOB ORDER CONTRACTING
FOR GENERAL CONSTRUCTION SERVICES

AGREEMENT FORM

PORT OF EVERETT
AGREEMENT FOR JOB ORDER CONTRACTING – GENERAL CONSTRUCTION SERVICES
PROJECT NO. AD-GN-2014-05.1

THIS AGREEMENT by and between the Port of Everett (hereinafter called PORT) and Burton Construction, Inc. (hereinafter called CONTRACTOR). PORT and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents.

The Work is generally described as follows:

The Work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

The value of the Job Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (unit price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.

ARTICLE 2 – PORT REPRESENTATIVES

- 2.1 **Project Manager:** The PORT will appointed a PROJECT MANAGER with each Job Order, who shall be the PORT's representative, assume all duties and responsibilities and have the rights and authority assigned to the PROJECT MANAGER in the Contract Documents in connection with completion of the Work in accordance with the Job Order and the Contract Documents.
- 2.2 **Contract Administrator / JOC Coordinator:** The PORT's representative designated by the PORT to manage the JOC program for the PORT. The Contract Administrator / JOC Coordinator will oversee the execution of the JOC program on behalf of the PORT and will provide overall guidance to the Project Managers and Contractor in the execution of Job Orders. The Contract Administrator / JOC Coordinator shall intervene in disputes or disagreements between the Project Manager and the Contractor.

ARTICLE 3 - CONTRACT TIME

- 3.1 The Base Term of the Contract is two (2) years.
- 3.2 There is one (1) bilateral Option Term. Both parties must agree to extend the Contract for the Option Term. The duration of the Option Term is one year.
- 3.3 The Owner and the Contractor may agree to extend the Option Term.
- 3.4 All Job Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be

made, and the guarantee period may continue, after such period has expired. All terms and conditions of the Contract apply to each Job Order.

- 3.5 The CONTRACTOR shall commence work upon issuance of a Job Order, and shall complete the Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.
- 3.6 **Liquidated Damages:** PORT and CONTRACTOR recognize that time is of the essence of this Agreement and that PORT will suffer financial loss if the Detailed Scope of Work is not completed within the Job Order Completion Times specified in the Job Order, plus any extensions thereof allowed in accordance with Article 10 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by PORT if the Work is not completed on time. Accordingly, instead of requiring any such proof, PORT and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay PORT as outlined below and further defined in Supplemental Conditions SC-02:
Liquidated Damages.

At the sole discretion of the Owner, liquidated damages will be assessed, if at all, on a Job Order-by-Job-Order basis. For each calendar day that the Detailed Scope of Work for a Job Order shall remain incomplete after the Job Order Completion Time, the amount per calendar day specified in following table, Schedule of Liquidated Damages, will be deducted from any money due the Contractor, not as a penalty but as liquidated damages; provided however that due account shall be taken of any adjustment of the Job Order Completion Time as provided for elsewhere in this Contract.

Value of Job Order	Liquidated Damages for all other locations	Liquidated Damages for Terminal Locations
\$0 to \$10,000.00	\$100/Day	\$500/Day
\$10,000.01 to \$50,000.00	\$250/Day	\$1,000/Day
\$50,000.01 or Greater	\$500/Day	\$1,500/Day

ARTICLE 4 - CONTRACT PRICE

- 4.1 PORT shall pay CONTRACTOR for completion of the Detailed Scopes of Work in accordance with the Contract Documents.
- 4.2 The Contract is an indefinite-quantity contract for general construction work and services. The Minimum Contract Value as defined in the RFP: Job Order Contracting General Construction Services is \$25,000. The Estimated Annual Value is \$2,000,000 for the Port's Job Order Contracting Program. The Port reserves the right to issue up to the maximum amount specified in RCW 39.10.040 of \$4,000,000 per year. The Maximum Contract Value shall not exceed the value set forth in RCW 39.10.

- 4.3 The Contractor shall perform all work required, necessary, proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract for the Unit Prices set forth in the Construction Task Catalog® and the following Adjustment Factors:

Normal Working Hours Adjustment Factor

7:00 am to 6:00 pm Monday to Friday, except for Owner Holidays: 1.0170

Other Than Normal Working Hours Adjustment Factor

6:01 pm to 6:59 am Monday to Friday, and all day Saturday,
Sunday and Owner Holidays: 1.0170

Non Pre-priced Adjustment Factor: 1.1000

ARTICLE 5 - PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 12 of the General Conditions. Applications for Payment will be processed by PROJECT MANAGER as provided in the General Conditions.

- 5.1 Progress Payments. PORT shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by PROJECT MANAGER, within thirty (30) working days from application for payment. All progress payments will be on the basis of the progress of the Work as established in paragraph 12.1 of the General Conditions (and in the case of Unit Price Work based on the number of units completed).
- 5.2.1 Final Payment: Upon final completion and acceptance of the work in accordance with paragraph 12.8 of the General Conditions, PORT shall pay the remainder of the Contract Price as recommended by PROJECT MANAGER as provided in said paragraph 12.8.
- 5.2.2 Progress payment shall be made per the Project Payment Schedule in Exhibit C.
- 5.2.3 **RETAINAGE:** Per RCW 39.10.450, for purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each Work Order issued shall be treated as a separate contract. Therefore, retainage in the amount of 5% will be held from each Work Order in accordance with Washington state law, unless a retainage bond is provided for that work order.
- 5.2.4 **PREVAILING WAGE:** The Contractor and all subcontractors will be required to pay prevailing wages and file prevailing wage intents and affidavits with Labor & Industries for each Job Order.

ARTICLE 6 - INTEREST

All moneys not paid when due as provided in Article 12.8 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

CONTRACTOR, by submittal a Proposal and entering into an AGREEMENT, makes the following representations:

- 7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 7.2 CONTRACTOR is fully qualified to perform the Work to be performed hereunder in a competent and professional manner.
- 7.3 CONTRACTOR has given PROJECT MANAGER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by PROJECT MANAGER is acceptable to CONTRACTOR.

ARTICLE 8 - CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between PORT and CONTRACTOR concerning the work consist of the following:

- 8.1 This Agreement (pages 1 to 5, inclusive).
- 8.2 Performance and Payment Bonds, identified as exhibit A and consisting of 3 pages.
- 8.3 Insurance Certificate(s) and additional insured endorsements identified as exhibit B and consisting of 10 pages.
- 8.4 Contractor's Price Proposal, identified as exhibit C and consisting of 2 pages
- 8.5 Notice-of-Award, incorporated by reference.
- 8.6 General Conditions (pages 1 to 70, inclusive), incorporated by reference.
- 8.7 Supplementary Conditions (pages 1 to 9 inclusive), incorporated by reference.
- 8.8 Addenda numbers 1 to 3, inclusive, incorporated by reference.
- 8.9 CONTRACTOR's Proposal, incorporated by reference.
- 8.10 The Construction Task Catalog®, incorporated by reference.
- 8.11 Technical Specifications, incorporated by reference.
- 8.12 All Job Orders and related documents, including but not limited to, the Detailed Scope of Work with Drawings and/or Specifications, Request for Proposal, Price Proposal, Job Order Proposal, Notice to Proceed, retainage documentation, submittals, record documents, and all required close-out documentation and warranties, incorporated by reference.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions or Supplementary Conditions.

ARTICLE 9 - MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the

party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

- 9.3 PORT and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.
- 9.5 Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the parties and conclusive proof of such agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. The Port shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

IN WITNESS WHEREOF, PORT and CONTRACTOR have executed this Agreement, which is effective on November 17, 2014.

PORT OF EVERETT

By *Des Reardon*
Title CEO/EXECUTIVE DIRECTOR

CONTRACTOR: Burton Construction, Inc.

By *[Signature]*
Title PRES.

Address for giving notices

1205 Craftsman Way, Suite 200
Everett, WA 98201

Address for giving notices

3915 E. Nebraska Ave
Spokane WA 99217

**CONTRACT AD-GN-2014-5.1-BCI
Burton Construction, Inc.
Job Order Contract
2014 Burton Construction, Inc.**

SECOND RENEWAL OPTION PERIOD

Pursuant to the agreement between the parties, the following are the Adjustment Factors for the next option period, effective on November 17, 2016 and expiring on November 16, 2017:

ENR Construction Cost index for 20 City Average

Base Year			Option Year		
	Date	Index		Date	Index
1	September 2013	9551.58	1	September 2015	10065.09
2	October 2013	9888.86	2	October 2015	10128.32
3	November 2013	9666.46	3	November 2015	10104.69
4	December 2013	9667.77	4	December 2015	10135.00
5	January 2014	9664.45	5	January 2016	10132.55
6	February 2014	9681.11	6	February 2016	10181.92
7	March 2014	9701.96	7	March 2016	10242.09
8	April 2014	9749.51	8	April 2016	10280.39
9	May 2014	9795.92	9	May 2016	10315.44
10	June 2014	9800.38	10	June 2016	10337.05
11	July 2014	9834.63	11	July 2016	10379.26
12	August 2014	9845.59	12	August 2016	10385.65
		Base Average			Option Average
		9720.6850			10223.9542

Price Adjustment: $\frac{\text{Second Year Index Average}}{\text{Base Year Index Average}} = \frac{10223.9542}{9720.6850} = 1.0518$

	AWARD MULTIPLIER	x	PRICE ADJUSTMENT	=	OPTION MULTIPLIER
# AD-GN-2014-5.1-BCI					
Non Pre-Priced	1.1000	x	1.0000	=	1.1000
Normal Working Hours	1.0170	x	1.0518	=	1.0697
Other Than Normal Working Hours	1.0170	x	1.0518	=	1.0697