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## REQUEST FOR QUALIFICATIONS

### FERRY MAINTENANCE FACILITY PLANNING STUDY

**RFQ KT # 22-782**

**JULY 29, 2022**

**Proposals are due August 29, 2022; 2:00 P.M.**

Kitsap Transit, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat., 252.42 U.S.C. 2000d to 2000-4 and Title 49, Code of Federal Regulations Department of Transportation, subtitle A, of the Secretary, Part 21, nondiscrimination in federally assisted programs of the DOT issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

Kitsap Transit reserves the right to reject any and all Proposals without cause and to waive any informalities or irregularities.

**Grant Funded:**



**Federal Transit Administration**

## Bidder's Checklist

Solicitation Number: KT 22-782
Solicitation Name: Ferry Maintenance Facility Planning Study
Due Date and Time: August 29, 2022 @ 2:00 PM

The following checklist is provided as a guide to all documents and exhibits that **MUST** be submitted with your Bid to be considered responsive and complete. Failure to provide **ANY** of these documents could render your Bid nonresponsive and may cause it to be rejected.

Letter of Transmittal	
Firms Background	
Project Approach and Methodology with Schedule	
Technical Capacity	
Past Experience (3)	
Key Personnel	
Exhibit A: Bidder's Affidavit	
Exhibit B: Acknowledgement of Federal Clause and Certifications	
Exhibit B: Lobbying Certification	

I, the below signee, have reviewed this checklist and have provided all of the requested documents. I understand that failure to provide the requested documents could render my Bid non-responsive and may cause its rejection.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

## Section 1: Announcement

**Advertisement Post Date: July 29, 2022**

Kitsap Sun; Kitsap Transit Website: [www.kitsaptransit.com](http://www.kitsaptransit.com); OMWBE;

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### Request for Qualifications

#### KT # 22-782 Ferry Maintenance Facility Planning Study

**Scope of Work:** Kitsap Transit (KT) is soliciting proposals from qualified Consultants to analyze and determine a plan to guide the development of space in Kitsap County for a Ferry Maintenance Facility. Kitsap Transit requires the space to efficiently operate the passenger only ferry services as dry dock space is limited in the private shipyard sector. The difficulties of scheduling dry dock time while maintaining ferry maintenance schedules is reducing the efficiency of ferry operations. By owning the Maintenance Facility, Kitsap Transit will be able to increase vessel reliability and reduce costs through increased maintenance efficiencies.

Space for a minimum of four berth docks is necessary. The berth docks must accommodate the current fleet of vessels of which the largest is 140 feet in length by 40 feet wide. The Maintenance Facility will need space for a hoist lift with a weight capacity of at least 300 tons and laydown area for two vessels at minimum. The hoist and laydown must be designed for vessels of at least 140 feet in length and 40 feet wide. The site must also have the ability to accommodate a fixed structure to be used as a working shop for repair, and parking for up to four vehicles. The selected consultant will locate, review, and analyze viable alternatives for the Ferry Maintenance Facility and recommend a preferred alternative(s).

**Bidding Documents:** Plans, specifications and addenda for this project are available on-line through Kitsap Transit's Website [www.kitsaptransit.com](http://www.kitsaptransit.com) or by emailing Patrick Rogers at [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com).

**Pre-Proposal Meeting:** A Pre-Proposal conference is not being offered.

**Questions and Request for Clarifications:** All questions, requests for information, and Pre-Bid material substitutions, must be submitted in writing and received by **5:00 PM August 19, 2022** at: [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com).

**Plan Holder's List:** Email Patrick Rogers at [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com) to have your firm added to the Plan Holder's List to automatically receive updates, addenda and other project information.

**Proposal Due Date:** Emailed Proposals will be received at [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com) until **2:00 PM on August 29, 2022**. When the official clock reads 2:00:01 PM, Proposals are considered late and will not be considered for award.

**Anticipated Procurement Schedule:** The activities and dates listed below represent the anticipated procurement schedule. Kitsap Transit will provide changes to the Pre-Bid date and Bid Due date via Addenda. Dates preceded by an asterisk (\*) are estimated.

Activity	Date and Time
Request for Qualifications Released	July 29, 2022
Request for Clarification	5:00 PM August 19, 2022
Proposal Due Date	<b>2:00 PM August 29, 2022</b>

Board Award Date	*October 4, 2022
Notice to Proceed Issued	*October 17, 2022

**EQUAL OPPORTUNITY:** It is Kitsap Transit’s policy to ensure full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin or sex in the provision of benefits and services resulting from Federally assisted programs of the Department of Transportation and in the Award and administration of all Contracts. Small and women or minority owned Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26 are encouraged to submit Proposals.

**End of Section 1**

## **Section 2: Instructions to Proposers**

### **2.1 Introduction:**

Interested parties are encouraged to submit a Proposal in accordance with the requirements set forth in the **RFQ NO LATER THAN 2:00 p.m., August 29, 2022**. When the official clock reads 2:00:01 PM, submissions are considered late and will not be considered.

Proposers must be fully insured and registered to conduct business in the State of Washington prior to Contract execution date and licensed for business in their state of residence. Policies of insurance, as outlined in the RFQ shall be obtained and kept in force for the duration of the Contract.

By submitting a Proposal in response to this solicitation, Proposers agree to be bound by all legal requirements and contract terms and conditions contained in this RFQ. Failure to include any of the requested information, properly completed forms, and/or documents may be cause for immediate rejection of the proposal.

Except as otherwise provided for herein, Proposals that are incomplete or that are conditioned in any way or contain erasures, alterations, or items not called for in the proposal or that are not in conformance with the law, may be rejected as non-responsive.

Kitsap Transit reserves the right to accept or reject any and all submitted proposals, portions or parts thereof; to waive informalities and minor irregularities in proposals; to decline award based on available funding for the Contract; and to award in whole or in part to the most “highly qualified” and responsible Proposer.

In consideration for Kitsap Transit’s review and evaluation of its proposal, the Proposer waives and releases any claims against Kitsap Transit arising from any rejection of any or all proposals, including any claim for costs incurred by Proposers in the preparation of proposals submitted in response to this solicitation.

If Kitsap Transit determines that collusion has occurred among Proposers, none of the proposals of the participants in such collusion will be considered; Kitsap Transit’s determination shall be final.

Kitsap Transit may obtain clarification of any point in submitted proposals or request additional information, if necessary, to properly evaluate proposals. Proposers must be prepared to present necessary evidence of experience, ability, service facilities and financial standing to satisfactorily meet the requirements set forth or implied in the Proposal. Failure of a Proposer to respond to such a request for additional information or clarification may result in rejection of that proposal.

This RFQ provides details on what is required when submitting a Proposal for this Work, how Kitsap Transit will evaluate the Proposals, and what will be required of the Consultant in performing the Work. This RFQ also gives the estimated dates for the various events in the submission process. While these dates are subject to change, prospective Proposers must be prepared to meet them as they currently stand.

Other sections of the RFQ will cover general submission instructions, project overview, proposal schedule, consultant qualifications and experience, evaluation criteria, and contract terms.

Kitsap Transit shall use qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. Section 1102 and U.S.C. Section 5325(d). Services subject to this requirement are program management, construction

management, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

## **2.2 Definitions:**

**Addenda:** A written or graphic document issued to all Bidders and identified as an Addendum prior to Bid opening, which modifies or supplements the Bid Documents and becomes a part of the Contract.

**Contract:** The written agreement between Kitsap Transit and the Contractor. The Contract includes, Contract Agreement, these solicitation documents, any and all Addenda issued, varies certifications and affidavits, Proposers submitted Proposal and agreed upon Cost Proposal.

**Contractor:** means the Successful Bidder who is awarded the Contract and has subsequently executed the Contract with Kitsap Transit.

**Cost Proposal:** A document requested from the “most highly” qualified Proposer outlining the hourly rates, Overhead, G&A and profit to complete the scope of work

**Proposal:** The offer of a Proposer in response to this RFQ

**Proposer:** means a person, firm or corporation that has made an offer in response to the RFQ

**Solicitation Documents:** means the solicitation in its entirety

**RFQ:** is an abbreviation meaning Request for Qualifications.

**Subcontractor:** An individual, partnership, firm, corporation, or joint venture who is sublet part of the Contract by the Contractor.

**Successful Bidder:** means the “most highly” qualified Proposer that provides a “fair and reasonable” Cost Proposal

## **2.3 Basis for Contract Negotiations:**

This RFQ, the Proposers submission and the subsequent Cost Proposal shall be used for Contract Negotiations

## **2.4 Proposal Due Date:**

Emailed proposals must be delivered to [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com) NO LATER THAN **2:00 P.M.** on **August 29, 2022** when the official clock read 2:00:01 PM submissions are considered late and will be rejected.

Kitsap Transit may refuse to consider a Proposer who it determines to have an unsatisfactory record of performance and/or integrity in connection with the proposal/bidding or performance phase of any previous contract.

Proposals will not be publicly opened and the information contained in all proposals will be kept strictly confidential until a Contract is fully executed.

## **2.5 Requests for Information (RFI), Communications and Addenda:**

Proposers who seek to obtain information, clarification, or interpretations from contacts other than the Kitsap Transit Purchasing Coordinator are advised that such material is used at the Proposer’s own risk.

Kitsap Transit will not provide binding oral interpretations, explanations, or instructions as to the meaning or interpretation of the solicitation documents. This process will be the only opportunity for Proposers to ask questions. Kitsap Transit staff will not answer questions regarding this RFQ verbally. All questions must be submitted in writing via email.

Proposers should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and objectionable material must be made in writing and submitted to Patrick Rogers at [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com) by **August 19, 2022, 5:00 PM**. This will allow issuance of any necessary amendments. It will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which award could not be made.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of Kitsap Transit, in writing at least five days before the time set for opening.

Submitted Proposals shall be conclusive evidence to Kitsap Transit that the Proposer has thoroughly examined and understands all requirements of the solicitation and the Work to complete the Contract. The failure or neglect of a Proposer to receive or examine any solicitation document or any part thereof, work site, statutes, regulations, ordinances or resolutions shall in no way relieve the Proposer from the obligations with respect to its Proposal or to the Contract. No claim for additional compensation shall be allowed which is based upon a lack of knowledge thereof.

To be given consideration, any and all communications requesting information, material substitutions, clarifications, and inquiries concerning this solicitation must be submitted in writing and received **NO LATER THAN 5:00 P.M. on August 19, 2022** to be considered in an Addendum.

## **2.6 Plan Holders List:**

All prospective Proposers are required to register as "Plan Holders" to receive addenda or clarifications regarding the solicitation. It is recommended that Proposers notify Patrick Rogers of their intent to submit a proposal and register with Kitsap Transit's Plan Holders List in order to receive electronic notification of issued Addenda. Proposers that do not register will not be notified of Addenda and will need to periodically check for Addenda on Kitsap Transit's website at: <http://www.kitsaptransit.com/agencyinformation/procurement> during the Proposal period and before submitting your Proposal.

## **2.7 Right of Rejection:**

Proposers must comply with all of the terms of the RFQ, and all applicable local, state, and Federal laws and regulations. Kitsap Transit may reject any proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFQ.

Minor informalities, that do not affect responsiveness, that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other offers; that do not change the meaning or scope of the RFQ; that are trivial, negligible, or immaterial in nature; that do not reflect a material change in the work; or, that do not constitute a substantial reservation against a requirement or provision may be waived by Kitsap Transit.

Kitsap Transit reserves the right to refrain from making an award if it determines that to be in its best interest of the agency or if funding becomes unavailable.

## **2.8 Cancellation or Extension:**

Kitsap Transit reserves the right to cancel this solicitation or extend the Proposal Due Date and time, by written Addendum, at any time *prior to* the set Proposal Due Date and time, or in the event only a single proposal or no proposals are received. If a Proposer pursues a protest or a request for reconsideration, its proposal is deemed extended until Kitsap Transit executes the Contract, or until the protest or request for reconsideration is withdrawn by the Proposer.

## **2.9 Modification:**

Proposers will not be allowed to alter proposals *after* the Proposal Due Date and time. Submitted proposals may only be changed if a written request is received by Kitsap Transit *before* the set Proposal Due Date and time. Such requests must be signed by an individual authorized to submit proposals on behalf of the firm. All proposal modifications shall be made in writing, executed and submitted in the same form and manner as the original proposal. Nothing in this section shall be construed to permit the Proposer to alter its Proposal *after* it has been submitted pursuant to the terms of this solicitation.

## **2.10 Withdrawal:**

Proposers will not be allowed to withdraw proposals *after* the Proposal Due Date and time unless the award is delayed for a period exceeding ninety (90) days. Any Proposal not so timely withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide Kitsap Transit the services described herein, or until one or more of the proposals have been approved by Kitsap Transit, whichever occurs first.

## **2.11 Disclosure of Proposal Contents:**

By submitting a proposal, the Proposer has thereby agreed to the provision of Washington State public disclosure laws RCW Chapter 42.56, Kitsap Transit will regard proposals as public records which will be available for public inspection and/or copying following contract award, regardless of any markings or notices contained in the proposal documents. Information will not be released by Kitsap Transit *prior to* contract award in order to protect the integrity of the procurement process, unless otherwise required by law. All proposals will remain confidential until a contract is awarded and fully executed by all parties involved.

If a Proposer considers portions of its proposal to be protected under Washington State law, the Proposer shall clearly identify and mark such portions as "CONFIDENTIAL" or "PROPRIETARY" and submit such portions in a sealed envelope separate from the rest of the proposal. It is not usually reasonable or legally defensible to mark an entire proposal as "confidential" or "proprietary". Marking the entire proposal as such will not be honored and the proposal may be rejected as non-responsive. Kitsap Transit shall not release or divulge such information to third parties without the consent of the Proposer, unless required to do so by applicable law or order of a court of competent jurisdiction. If a member of the public demands to review portions of a proposal marked "Confidential", Kitsap Transit will notify the affected Proposer of the request and the date that such records will be released unless the Proposer obtains a court order enjoining that disclosure.

It will be the responsibility of the Proposer to protect the confidentiality of any information submitted in the Proposal and the Proposer shall take such legal actions as it may determine to be necessary to protect its interest. If the Proposer has not commenced such action within five (5) calendar days after receipt of the notice, KITSAP TRANSIT will make the requested portions available to the Requestor. The Proposer, asserting that portions of its proposal are legally protected, will assume all liability and responsibility for any information declared confidential and shall defend and hold KITSAP TRANSIT harmless for any cost, penalties, and/or fees (including reasonable attorney fees) incurred in any action regarding the disclosure of said information. KITSAP TRANSIT assumes no responsibility or liability for any losses or damages which may result from the information contained in the proposal.



After the Proposal due date and until a Contract is awarded, no information will be discussed with the competitors or anyone outside the Evaluation Committee. No Proposer or other member of the public will be told of the rankings among Proposers, nor the number of firms within the competitive range. Proposers will only be told that their proposal was ranked within the competitive range. Names of firms, cost data, or other information from Proposers submitted in response to this RFQ shall remain strictly confidential until after contract award.

#### **2.12 Non-Collusion Affidavits:**

Proposer shall submit, with its Proposal, an affidavit (EXHIBIT A) stating that neither Proposer nor its agents, nor any other party on its behalf, has paid or agreed to pay, directly or indirectly, any person, firm, or corporation, any money or valuable consideration for assistance in procuring or attempting to procure the contract that will result from this RFQ, and further agrees that no such money or consideration will be hereafter paid.

#### **2.13 Conflicts of Interest**

- a. **Current and Former Employees:** KITSAP TRANSIT seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former KITSAP TRANSIT employees in transactions with KITSAP TRANSIT. Consistent with this policy, no current or former KITSAP TRANSIT employee may contract with, influence, advocate, advise, or consult with a third party about a KITSAP TRANSIT transaction, or assist with preparation of bids submitted to KITSAP TRANSIT while employed by KITSAP TRANSIT or after leaving KITSAP TRANSIT's employment, if he/she was substantially involved in determining the Work to be done or process to be followed while a KITSAP TRANSIT employee.
- b. **Organizational Conflicts of Interest:** An organizational conflict of interest is a situation in which, because of other activities, relationships, or contracts, a contractor or subcontractor is unable, or potentially unable, to render impartial assistance or advice to KITSAP TRANSIT; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage. KITSAP TRANSIT will evaluate future procurements related to this Contract to determine if there is an organizational conflict of interest. If an organizational conflict of interest exists, KITSAP TRANSIT may prohibit the contractor and any of its subcontractors from participating in such related procurements/projects.

#### **2.14 Subcontractors:**

Any Subcontractors and outside associates or consulting firms or individuals, including any substitutions thereof, required by the Contractor in connection with work to be provided under this Contract will be subject to prior authorization by Kitsap Transit. Each subcontract and a cost summary, therefore, shall be subject to review by Kitsap Transit prior to the Subcontractor proceeding with the work. The Contractor shall be responsible for the professional standards, performance, and actions of all persons and firms performing subcontract work. The Contractor shall be responsible for the completion and submission of any federally required forms that may be required of the Subcontractor. The Contractor, at the request and direction of Kitsap Transit, will provide copies of any written agreements showing their contractual relationship.

A Proposer's failure to provide this information, within the time set, may cause Kitsap Transit to consider their proposal non-responsive and reject the proposal.

The substitution of one subcontractor for another must be approved, in writing from Kitsap Transit, before the substitution is made.

**2.15 Personnel:**

In submitting their proposals, Proposers are representing that the personnel described in their proposals shall be available to perform the services described, barring illness, accident or other unforeseeable events of a similar nature. Furthermore, all personnel shall be considered to be, at all times, the sole employees of the service provider, under his or her sole discretion, and not employees or agents of Kitsap Transit.

**2.16 Debarment and Suspended**

Contractor must not be debarred or suspended in order to conduct business with Kitsap Transit. Upon the Proposal Due Date and for the full duration of the Contract, the Contractor will not be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or State department or agency or from bidding on any public contract; and shall not be presently indicted for, or otherwise criminally or civilly charged by, a governmental entity (federal, State or local) with commission of any of the offenses enumerated in below.

Within a three (3) year period preceding this proposal, Contractor shall not have been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract; Violation of federal or State anti-trust statutes; Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or had one or more public transactions (federal, State or local) terminated for cause or default. If it is later determined that the Contractor knowingly rendered an erroneous certification under the Affidavit submitted with its proposal, or failed to notify Kitsap Transit immediately of circumstances which made the original certification no longer valid, Kitsap Transit may immediately terminate the Contract.

**2.17 Disadvantaged Business Enterprise Goal:**

The purpose of the Disadvantaged Business Enterprise (DBE) overall goal is to achieve a “level playing field” for ready, willing and able DBEs seeking to participate in federally-assisted contracts. Kitsap Transit’s DBE goal for federal fiscal year 2022 is 2.93%, the full text of which may be found at <http://www.kitsaptransit.com/agency-information/procurement>.

**2.18 Title VI:**

It is the policy of Kitsap Transit to assure that no person shall, on the grounds of race, color, national origin and sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or otherwise be discriminated against under any of its federally funded programs and activities. See <http://www.kitsaptransit.com/uploads/pdf/projects/executedtitlevijune2011.pdf> for the full text of the above Civil Rights statements.

**2.19 Discussions with Proposers:**

Kitsap Transit may conduct discussions with proposers for the purpose of clarification. The purpose of these discussions will be to ensure full understanding of the requirements of the RFQ and proposal. If modifications are made as a result of these discussions, they will be put in writing.

**2.20 Evaluation of Proposals:**

An evaluation committee made up of Kitsap Transit staff, their designees, and/or subject matter experts will evaluate all responsive proposals. The evaluation will be based solely on the evaluation criteria set

out in this RFQ. Proposals will be evaluated on the merits of the information provided not in comparison to other proposals received.

**2.21 Contract Type:**

It is anticipated that the contract resulting from this solicitation will be a firm-fixed price agreement, based on the successful proposer's Cost Proposal. The final fixed price of the contract may or may not reflect price negotiation between Kitsap Transit and the successful proposer.

**2.22 Contract Documents:**

The successful Proposer will receive an award package from KITSAP TRANSIT that includes the Final Award Notice, two original duplicates of the Contract for signature, and other documents as required. Contractor must immediately sign and return all requested documents to KITSAP TRANSIT within ten (10) calendar days, unless indicated otherwise, or KITSAP TRANSIT may utilize their right to cancel the award and go to the next highest scoring Proposer. Proposers should already have preparations in place to notify their insurance broker and/or bonding agent to immediately obtain the required documents. *A sample contract for services is provided to inform submitters of the expected terms and conditions required by Kitsap Transit. The contract is provided for information and Proposer should note any exception to the Contract language in their Proposal.*

**2.23 Failure to Execute Contract:**

Should the awarded Contractor fail to execute the Contract within ten (10) days from the Final Award Notice date, KITSAP TRANSIT may withdraw the award and present the award to the next highest scoring Proposer. Should events give rise to this instance, the Proposer failing to execute a contract may be removed from KITSAP TRANSIT's bid list for any future contracting opportunities.

**2.24 Defective Materials or Services:**

When and as often as KITSAP TRANSIT determines that the products or services furnished under the Contract are not fully and completely in accordance with any requirement of the Contract, KITSAP TRANSIT may give written notice and description of such non-compliance to the Contractor. Within seven (7) calendar days of receiving such written notification, Contractor must supply KITSAP TRANSIT with a written detailed plan of action that indicates the time and methods needed to bring the products or services within acceptable limits under the Contract. KITSAP TRANSIT may reject or accept this plan at its discretion.

In the event this plan is rejected or the defect has not been remedied within thirty (30) days of Contractor's receipt of notice, the products or services will be deemed not accepted and returned to the Contractor at the Contractor's expense. KITSAP TRANSIT, in its sole discretion, may purchase a replacement from another source and charge-back the cost for such warranty replacement to the Contractor. This procedure to remedy defects is not intended to limit or preclude any other remedies available to KITSAP TRANSIT by law, including those available under the Uniform Commercial Code, Title 62A RCW.

**2.25 Insurance Requirements:**

The Contractor shall, at its sole cost and expense, obtain and maintain during the entire term of this Contract the minimum insurance set forth below. In the event the Contractor is a Joint Venture, these insurance requirements shall apply to each Joint Venture member separately. By requiring such minimum insurance, KITSAP TRANSIT shall not be deemed or construed to have assessed the risks

that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including without limitation, liability under the indemnity provisions of this Contract. Damages recoverable by KITSAP TRANSIT shall not be limited to the amount of the required insurance coverage.

- Worker's Compensation Insurance in compliance with the laws of the State of Washington covering all CONSULTANT's employees who perform under this Agreement.
- Comprehensive Auto Liability Insurance on all vehicles used in connection with this Agreement whether owned, non-owned, or hired; with limits for bodily injury or death not less than \$100,000.00 per person and \$300,000.00 per occurrence, and property damage limits of not less than \$50,000.00; or in the alternative, not less than \$300,000.00 combined single limit coverage.
- Comprehensive General Liability Insurance with limits for bodily injury and property damage of not less than \$300,000.00 per incident and \$600,000.00 aggregate. A certificate of such insurance or a copy of such insurance policy or policies shall be provided to TRANSIT within one week after the execution of this Agreement. CONSULTANT' shall agree to give TRANSIT thirty (30) days written notice of cancellation in coverage below the limits set forth herein.
- Professional liability insurance appropriate to the Consultant's profession with limits of no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

Coverage in the minimum amount set forth herein shall not be construed to relieve Contractor from liability in excess of such coverage. Kitsap Transit, its employees, and its agents shall be specifically included as an additional insured in the insurance coverage required by this section.

Notwithstanding, Kitsap Transit reserves all claims or rights of action against Contractor as if Kitsap Transit were not named in the subject policy or policies.

Taking into account the Scope of Work and Services to be performed by a Subcontractor, the Contractor shall prudently determine whether, and in what amounts, each Subcontractor shall obtain and maintain public liability, professional liability, and any other insurance coverage. Any insurance required of Subcontractors shall, where appropriate and/or applicable, name KITSAP TRANSIT as an additional insured.

The Contractor and its insurers shall endorse the required insurance policy (ies) to waive their right of subrogation against KITSAP TRANSIT. The Contractor and its insurers also waive their right of subrogation against KITSAP TRANSIT for loss of its owned or leased property or property under its care, custody and control.

No provision in this Section shall be construed to limit the liability of the Contractor for services not done in accordance with the Contract, or express or implied warranties. The Contractor's liability for the services shall extend as far as the appropriate periods of limitation provided by law and up to any legal limits.

The Contractor may obtain any combination of coverage or limits that effectively provides the same or better amounts and types of coverage as stipulated above, subject to review and approval by KITSAP TRANSIT.

The Contractor warrants that this Contract has been thoroughly reviewed by the Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Contract.

## **2.26      Limitation of Liability**

A. Non-conforming Services – For any services which fail to conform to the scope of the Contract and such failure is caused solely by the negligence of the Contractor, no charge will be invoiced to KITSAP TRANSIT. If both parties are negligent, they agree to apportion between them the damage attributable to the actions of each.

B. Damages – Neither party will seek damages, either direct, consequential, or otherwise against the other in addition to the remedies stated herein.

C. Third Party Claims – In the event that either party is found liable for damages to third parties as a result of the performance of services under this Contract, each party will be financially responsible for the portion of damages attributable to its own acts and responsibilities under this Contract

## **2.27      Taxes:**

Any Contract wholly for professional or other applicable services is generally not subject to Retail Sales Tax and therefore, the Consultant shall not collect Retail Sales Tax from Kitsap Transit on those Contracts. Any incidental taxes paid as part of providing the services shall be included in the payments under the contract.

No adjustments will be made in the amount to be paid by KITSAP TRANSIT under the Contract because of any misunderstanding or any lack of knowledge of the Proposer as to liability for, or the amount of, any taxes or assessments which the Proposer may be liable or responsible for by law.

## **2.28      Protest and Appeals Policy:**

Kitsap Transit Protest and Appeals policy, **Attachment A**, is provided for reference.

Proposers are advised that to be considered a valid protest, subject matter can only address issues associated with this Proposal process. Accordingly, the protest cannot be associated with, or challenge the recommendations of, Kitsap Transit staff or its Evaluation Committee. A protest can only be put forth that Kitsap Transit staff did not follow their own policies or procedures that govern procurement and, accordingly, a Proposer was unfairly treated. The protest cannot challenge Kitsap Transit staff or the Evaluation Committee's recommendation of a potentially successful Proposer.

**END OF SECTION 2**

## **Section 3: General Scope of Work**

### **Background:**

Kitsap Transit operates five passenger-only ferry routes from five different terminals linking to Seattle and between Bremerton to Port Orchard. There are 10 ferries owned by Kitsap Transit. The ferries include three for service between Bremerton and Port Orchard, three for Bremerton to Seattle service, and four for the Kingston and Southworth services to Seattle. Service currently operates seven days per week on the Bremerton to Port Orchard route and up to six days a week on the three routes serving Seattle. Kitsap Transit currently contracts with local shipyards to provide dry dock and other heavy maintenance for the vessels. However, due to growing demand and limited shipyard capabilities there is an urgent need for a Kitsap County based maintenance facility owned and operated by Kitsap Transit to allow for continuity of operations. Currently, the difficulty of scheduling maintenance with availability at local shipyards is often causing reliability issues with the ferry services when unexpected maintenance problems arise.

### **Need & Purpose**

Kitsap Transit requires adequate space in Kitsap County for a Ferry Maintenance Facility to efficiently operate the passenger only ferry services as dry dock space is limited in the private shipyard sector. The difficulties of scheduling dry dock time while maintaining ferry maintenance schedules is reducing the efficiency of ferry operations. By owning the Maintenance Facility, Kitsap Transit will be able to increase vessel reliability and reduce costs through increased maintenance efficiencies.

Space for a minimum of four berth docks is necessary. The berth docks must accommodate the current fleet of vessels of which the largest is 140 feet in length by 40 feet wide. The Maintenance Facility will need space for a hoist lift with a weight capacity of at least 300 tons and laydown area for two vessels at minimum. The hoist and laydown must be designed for vessels of at least 140 feet in length and 40 feet wide. The site must also have the ability to accommodate a fixed structure to be used as a working shop for repair, and parking for up to four vehicles. The selected consultant will locate, review, and analyze viable alternatives for the Ferry Maintenance Facility and recommend a preferred alternative(s).

### **Tasks & Deliverables**

#### **1. Utilize past siting studies and identify alternative locations for analysis**

Kitsap Transit will provide an initial list of sites from a previous high-level study. The consultant will validate identified sites and expand the list as appropriate. Sites proposed must be practicable and reasonable for the proposed operations. A no-action alternative must also be considered and evaluated. Ownership of the preferred alternative is not necessary although, a long-term lease with owner must be a viable option if ownership is not.

*Deliverable: Potential Site Location Identification and Location Descriptions Task Memo*

#### **2. Initial alternative site evaluation criteria**

The consultant will develop key initial site evaluation criteria to be used to rate and rank up to three locations for further analysis. The consultant will be responsible for proposing evaluation criteria for Kitsap Transit's consideration. These criteria will be used to identify up to three sites to be carried forward for further analysis. Site criteria must include at a minimum; known environmental concerns, needed space for the Facility, identify known engineering constraints and environmental justice considerations.

*Deliverable: Initial site consideration criteria*

### **3. Alternative site evaluation matrix**

The consultant will develop an evaluation matrix to be used to narrow the field of sites for detailed analysis and to rate and rank the alternative locations selected for further analysis. The consultant will be responsible for proposing additional evaluation criteria for Kitsap Transit's consideration that expands the evaluation criteria identified in task two. The consultant will be responsible for leading the evaluation work involving Kitsap Transit designated staff in periodic review of the site location and analysis work.

*Deliverable: Draft and Final Site Evaluation Matrix (to be completed in later tasks)*

### **4. Identify potential location(s) for further analysis**

Conduct the preliminary analysis required to rate identified sites and select the sites for further analysis. Items such as cost threshold, availability, logistics and least impactful construction measures should be considered and analyzed prior to moving sites forward for site analysis.

*Deliverable: Task Memo discussing the preliminary analysis and recommended sites for further analysis*

### **5. Site Analysis**

Conduct additional analysis on the alternative locations selected for further analysis (up to three sites) In addition to the analysis required to complete the site evaluation matrix the consultant will prepare:

- ROM cost estimates
- Ridership forecasts
- High level conceptual Ferry Maintenance Facility layout
- Mitigation measures necessary for success at preferred site(s)

### **6. Outreach Support**

Once alternative location(s) have been identified the public involvement process will commence. The consultant will support Kitsap Transit staff with materials and schematics to promote conversation and seek input on options from members of the general public as well as partner agencies.

- a. Coordination of public involvement activities and two public hearings
- b. Early and continuing opportunities during project site identification to be involved in identification of social, economic, and environmental impacts as well as any identified relocation impacts to business or individuals
- c. Assistance with notifications of public events, hearings and opportunities for public to get involved
- d. Production of materials for the public involvement process

### **7. Site Evaluation Report**

The consultant will prepare a report documenting the work conducted to identify and evaluate Ferry Maintenance Facility alternatives. The report will include a summary of findings and a discussion of the preferred location(s) This final report must include the following:

- a. The process employed to identify all reasonable alternatives and to explore and objectively evaluate alternative locations
- b. A discussion of alternatives which were eliminated from detailed study identifying the reasons for their having been eliminated
- c. Provide a complete and detailed discussion of each alternative location considered for further analysis including the relative ranking and preferred alternative location(s) so that reviewers may evaluate their comparative merits
- d. Include appropriate mitigation measures not already included in the proposed action or alternative
- e. Include the alternative of no action including benefits and constraints

- f. Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative(s) in the final statement after Kitsap Transit Board adoption

*Deliverable: Draft and Final Ferry Maintenance Facility Alternatives Analysis; presentation at the Kitsap Transit Board of Commissioners Meeting*

## **8. Develop Scope of Work for the least Environmentally Damaging Site Analysis**

Develop a scope of work and preliminary costing analysis for the least Environmentally Damaging Site Analysis as outlined by the Federal Transit Administration Circular 9030.1E and all other applicable local, state, and federal regulations including NEPA and SEPA. This should include impacts to aquatic ecosystem for each remaining practicable site. The Scope of Work must include:

- a. Direct, indirect and cumulative impacts (beneficial or adverse) to the aquatic ecosystem associated with each remaining alternative location
- b. Identify, specify and quantify the impacts to the aquatic ecosystem
- c. Describe the significant adverse environmental impacts associated with each of the alternative locations on other natural ecosystem features and how the determination of significance was made
- d. Demonstration of equivalent evaluation methods used and the level of detail on how impacts are identified are required for each alternative location
- e. The degree to which the proposed action may affect public health or safety
- f. Unique characteristics of geography such as proximity of historic or cultural resources or ecologically critical areas
- g. The degree to which the effects on the quality of the human environment are likely to be highly controversial
- h. The degree to which the possible effects on the human environment are highly uncertain or involve unique unknown risks
- i. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the endangered species act of 1973
- j. Whether the action threatens a violation of federal, state or local law or requirements imposed for the protection of the environment

*Deliverable: Scope of work and cost analysis for anticipated work for bidding purposes.*

### **Project Phasing Statement**

Kitsap Transit has identified the tasks required to conduct an alternatives evaluation for the Ferry Maintenance Facility. Consultants will be evaluated on their qualifications for the complete scope of work. However, Kitsap Transit may choose to execute a phased contract.

## **END OF SECTION 3**



## **Section 4: Proposal Content**

Content and completeness are most important. Clear and effective presentations are preferred, with elaborate, decorative or extraneous materials strongly discouraged. The proposal shall be submitted in an 8 ½” by 11” format with foldouts from this basic size utilized as necessary. Proposal submittal requirements are described below.

All proposals must be submitted as specified on the proposal pages, which follow. Any attachments must be clearly identified. To be considered, the proposal must respond to all parts of the RFQ. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal. If publications are supplied by a proposer to respond to a requirement, the response should include reference to the document number and page number. Proposals not providing this reference will be considered to have no reference material included in the additional documents.

### **Proposal Requirements**

This section describes mandatory descriptions and submittals that must be addressed in or included with each proposal. Failure to address or include all items discussed in this section may subject the proposal to immediate rejection. KITSAP TRANSIT will be the final authority in determining the responsiveness of a proposal. The RFQ will be evaluated based on the criteria listed in the evaluation criteria.

Emailed proposals must be submitted in accordance with Section 2.4. All submission must have the following in the subject line of the email: “**Kitsap Transit Project KT 22-782 Ferry Maintenance Facility Planning Study**”.

To be considered a responsive submission, Proposers need to submit in PDF or Word. Proposals shall be submitted as an attachment. Kitsap Transit will not download proposals from third party sites and will not download from shared links.

Proposers must submit their Proposal without a Cost Proposal.

To facilitate a uniform review process and obtain the maximum degree to comparability, respondents are required to organize proposals in the following manner. Proposals that deviate from this organizational structure or are missing key information elements may be considered non-responsive.

### **1. Letter of Transmittal addressed to the Purchasing Coordinator as follows:**

The letter of transmittal should be written in the form of a standard business letter and must be signed by an individual authorized to legally bind the Proposer’s firm to Kitsap Transit. The letter of transmittal must include:

- Project title
- Name of respondent
- Location of the respondent
- Brief description of respondent’s proposal
- Identify Proposer’s Project Manager
- Identify the Point of Contact for the Proposal
- Acknowledgment of all Addenda

The letter of transmittal must also outline any language that the Proposer takes exception within the provided Sample Agreement. If the Proposer takes no exceptions, please state that in the letter as well. Failure to state exceptions relieves Kitsap Transit of any obligation to negotiate terms and conditions of the Consultant Agreement.

## **2. Firms Background – 2 page maximum (this section not scored)**

The Proposer shall provide a brief narrative description of their firm. The narrative should outline how the firm's capabilities, capacity, and how long the firm has been actively engaged in providing the services outlined in the Scope of Services section of this solicitation.

## **3. Project Approach and Methodology with Project Schedule**

The Proposal shall address the Scope of Work outlined in the RFQ and describe how the Proposer intends to carry out the tasks. A project schedule shall be provided outlining specific tasks to be performed, key milestones, and individuals responsible for each task. Describe the Proposer's project management techniques for ensuring that the work is accomplished in accordance with established standards and schedules.

The Proposer shall provide a detailed proposed Project Schedule. All major milestones, tasks, and deliverables should be listed. The schedule should assume a Notice to Proceed issued on October 17, 2022. Schedules should be realistic and achievable; the Awarded Consultant will be held to their proposed schedule.

The Contractor should be aware that the schedule presented in their Proposal will be used to measure Contractor's performance and compliance. Assumptions used to assemble the proposed schedule should be clearly articulated including any information or resources that Kitsap Transit will need to provide to maintain the schedule.

## **4. Technical Capacity:**

Proposer shall provide a narrative summary of the overall qualifications of the proposed team and how those skills will be used to complete the project. The narrative shall include specific examples from past projects demonstrating these qualifications. Proposer should demonstrate how the team will be arranged and how specific roles and responsibilities will be assigned and managed.

Proposer shall demonstrate how proposed team member's specific skills will lead to a positive outcome for Kitsap Transit. Provide sufficient detail to convey to members of the Evaluation Committee, the firm's knowledge of the subjects and skills necessary for the completion of the contract and any other services necessary to complete the Project.

If the Proposer plans to use any sub-consultants, they should be identified in the narrative and their roles should be outlined as well.

## **5. Past Experience**

Proposer shall provide three (3) references for similar projects that the team has completed in the past five (5) years; past Kitsap Transit work is not desired. For each reference, provide a narrative description of the services provided and how these services relate to Kitsap Transit's project. These references should also contain examples of challenges that were encountered during the project and how the Proposers team managed these challenges. The reference should contain a summary of the satisfaction level of the client at the end of the project. Each reference should name a primary point of contact including: name of agency, name and title of the point of contact, phone number, and email address. Kitsap Transit reserves the right to contact these references.

## **6. Key Personnel:**

Proposer shall provide a brief resume or similar description for the key staff members who will be assigned to this project, including their specific responsibilities and individual qualifications. The resume shall include a minimum of two (2) similar projects that each team member has worked on and a description of their roles and

responsibilities. Proposer shall also provide similar information for all sub-consultants that will be utilized for this project.

Proposers must identify a Project Manager, who may not be removed/substituted from the project without written approval from Kitsap Transit. The Proposer will describe the Project Manager's experience, expertise, knowledge, capabilities and resources as they pertain to managing this project's scope of work. The Proposer shall provide a description of three (3) similar projects that the Project Manager acted as either the Project Manager or was a key team leader; including the name of the client organization, primary client contact information, description of the project and time period the work was completed.

**7. Required Forms:**

- **Exhibit A: Bidder's Affidavit; signed**
- **Exhibit B: Acknowledgement of FTA Clauses**
- **Exhibit B: Lobbying Certification; signed**

**END OF SECTION 4**

## **Section 5: Evaluation of Proposals**

Award of this contract shall be determined through the evaluation process as described below and in the following section, provided the proposal is responsive in all respects to the procurement requirements.

Kitsap Transit will establish an evaluation committee responsible for (1) reviewing all proposals and (2) conducting the evaluation and interviews described in this RFQ; if necessary. Kitsap Transit reserves the right to reject or accept any and all proposals, to waive any minor irregularities in proposals or procedures, and to request additional information from Proposers at any stage of the evaluation.

Proposer qualifications will be evaluated by the Evaluation Committee based on the criteria below with a possible maximum score of 1000 points for each Proposal.

### **5.1 Evaluation Criteria**

The most highly qualified Proposer will be selected using the weighted criteria below.

<b>1. Understanding and Approach with Schedule</b>	<b>300</b>
<b>2. Key Personnel</b>	<b>300</b>
<b>3. Past Experience</b>	<b>200</b>
<b>4. Technical Capacity</b>	<b>200</b>
<b>Total</b>	<b>1000</b>

### **5.2 Interviews**

If the Evaluation Committee deems it necessary, all vendors in the competitive range will be invited to participate in interviews. Proposers will receive an invitation to the interview along with an agenda covering the information, schedule and presentation format. The Evaluation Committee will score each interview; two hundred (200) point maximum. The interview scores will be added to the weighted criteria score to determine the most highly qualified Proposer.

### **5.3 Evaluation Committee Recommendations**

The Evaluation Committee shall consist of qualified Kitsap Transit staff or other persons selected by Kitsap Transit to conduct evaluations of proposals. The committee will evaluate all responsive proposals based upon the information and references contained in the proposals as submitted.

### **5.3 Pre-Award Conference**

If deemed necessary, in Kitsap Transit's sole discretion, the Proposer determined to be the most highly qualified firm shall participate in a pre-award conference conducted by Kitsap Transit to clarify and discuss issues of concern and interest to both parties.

### **5.4 Rejection of Proposals**

Kitsap Transit may reject any Proposal that is not in the required format, does not address all the requirements of this RFQ, or that Kitsap Transit believes is not in the interest of the Agency to consider or to accept. In addition, Kitsap Transit may cancel this RFQ, reject all the Proposals, and seek to do the Work through a new RFQ or by other means.

**END OF SECTION 5**

## **Exhibits and Attachments**

**Exhibit A:** Bidder's Affidavit

**Exhibit B:** Federal Contract Clauses and Certifications

**Attachment A:** Protest and Appeal Policy

**Attachment B:** Sample Contract

**END OF SECTION 6**

## EXHIBIT A

### BIDDERS AFFIDAVIT PROJECT KITSAP TRANSIT 22-782

#### **NON-COLLUSION**

The Bidder affirms that, in connection with this Bid, the prices or cost data have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition and that the proposal herewith submitted is a genuine and not a sham or collusive Bid, or made in the interest or on behalf of any person not therein named; and further says that the said Bidder has not directly, or indirectly, induced or solicited any Bidder on the above Work or supplies to put a sham Proposal, or any other person or corporation to refrain from Bidding; and that said Bidder has not in any manner sought by collusion to secure to himself/herself an advantage over any other Bidders.

#### **CONFLICTS OF INTEREST & ANTI-KICKBACKS**

In regards to any performance of the Work or the provision of services or materials under the Contract resulting from this solicitation the Bidder affirms that:

1. It has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the services required to be performed under this Contract and that it shall not employ any person or agent having such interest. In the event that the Bidder, as Contractor, or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to Kitsap Transit and take immediate action to eliminate the conflict or to withdraw from said Contract as Kitsap Transit may require.
2. No officer, employee, Board member, agent of Kitsap Transit, or family member of same shall have or acquire any personal interest in this submittal, or have solicited, accepted or granted a present or future gift, favor, service, or other thing of value from or to any person involved in this submittal and that no such gratuities were offered or given by the Bidder or any of its agents, employees or representatives, to any official, member or employee of Kitsap Transit or other governmental agency with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the Award or performance of this Contract.

#### **CONTINGENT FEES AND GRATUITIES**

The Bidder affirms that in connection with this Bid:

1. No person or selling agency, except bona fide employees or designated agents or representatives of the Bidder, has been employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of Kitsap Transit or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

#### **SEGREGATED FACILITIES**

The Bidder certifies that their company does not and will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not and will not permit their employees to perform their services at any location under its control where segregated facilities are maintained. The Bidder agrees that a breach of this certification will be a violation of the Equal Opportunity or Civil Rights clause in any Contract resulting from acceptance of this Bid. As used in this Certification, the term "segregated facilities" means any waiting rooms, Work areas, restrooms and washrooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion

or national origin because of habit, local custom, or otherwise.

**DEBARMENT AND SUSPENSION**

The Proposer shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment" 2 C.F.R part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)", 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the bidder shall verify that its principles, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participating in any federally assisted Award;
- f) Disqualified from participating in any federally assisted Award.

By signing and submitting its bid, the bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by Kitsap Transit. If it is later determined by Kitsap Transit that the bidder knowingly rendered an erroneous certification, in addition to remedies available to Kitsap Transit, the Federal Government may pursue available remedies afforded by 31 U.S.C. § 3802, including but not limited to suspension and/or debarment. The bidder agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from the offer. The bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**If Bidder is unable to certify to any of the statements in this certification, the Bidder shall attach an explanation to this Section.**

***Note: The penalty for making false statements in offers is described in 18 U.S.C. 1001.***

THE BIDDER CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 USC SECTIONS 3802, *ET SEQ.*, ARE APPLICABLE THERETO.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

Printed Name & Title \_\_\_\_\_

Company Name \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**\*\*THIS FORM MUST BE SUBMITTED WITH YOUR BID\*\***

**EXHIBIT B**

**Contractors Certification of Acknowledgment  
Federal Transit Administration Contract Clauses and Certifications**

Source: FTA Master Agreement (26), October 1, 2019  
fta-master-agreement-fy-20201

The Contractor, \_\_\_\_\_, certifies, to the best of its knowledge and belief, that it:

- A. **Has** \_\_\_\_ **Has not** \_\_\_\_ read and understood the attached Federal Transit Administration Contract Clauses as they pertain to project \_\_\_\_\_, and;
  
- B. **Has** \_\_\_\_ **Has not** \_\_\_\_ read and understood the attached Federal Transit Administration Contract Certifications as they pertain to project \_\_\_\_\_.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name & Title of Contractor's Authorized Official



## FEDERAL TRANSIT ADMINISTRATION CONTRACT CLAUSES

### **NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD-PARTIES BY USE OF A DISCLAIMER**

Except as the Federal Government expressly consents in writing, the Recipient agrees that:

- (1) The Federal Government shall not have any obligation or liability related to:
  - (a) The Project,
  - (b) Any Third Party Participant at any tier, or
  - (c) Any other person or entity that is not a party (Recipient or FTA) to the Underlying Agreement for the Project, and
- (2) Notwithstanding that the Federal Government may have concurred in or approved any solicitation or third party agreement at any tier that has affected the Project, the Federal Government shall not have any obligation or liability to any:
  - (a) Third Party Participant, or
  - (b) Other entity or person that is not a party (Recipient or FTA) to the Underlying Agreement.

### **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

- (1) Civil Fraud. The Recipient acknowledges and agrees that:
  - (a) Federal laws and regulations apply to itself and its Project, including:
    1. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq., and
    2. U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31,
  - (b) By executing its Underlying Agreement, the Recipient certifies and affirms to the truthfulness and accuracy of any of the following that the Recipient provides to the Federal Government:
    1. Claim,
    2. Statement,
    3. Submission,
    4. Certification,
    5. Assurance, or
    6. Representation, and
  - (c) The Recipient acknowledges that the Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended and other applicable penalties if the Recipient:
    1. Presents, submits, or makes available any information in connection with any:
      - a. Claim,
      - b. Statement,
      - c. Submission,
      - d. Certification,
      - e. Assurance, or
      - f. Representation, and
    2. That information is false, fictitious, or fraudulent.
- (2) Criminal Fraud. The Recipient acknowledges that 49 U.S.C. § 5323(l)(1), authorizes the Federal Government to impose the penalties authorized by 18 U.S.C. § 1001 if the Recipient:
  - (a) Presents, submits, or makes available any information in connection with any:
    1. Claim,
    2. Statement,
    3. Submission,
    4. Certification,

5. Assurance, or
  6. Representation, and
- (b) That information is false, fictitious, or fraudulent.

## **ACCESS TO RECORDS**

### The Recipient agrees that:

- (1) As required by 49 U.S.C. § 5325(g), 49 C.F.R. § 18.36(i)(10), and 49 C.F.R. § 19.53(e), it will provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information pertaining to the Project to the:
  - (a) U.S. Secretary of Transportation or the Secretary's duly authorized representatives,
  - (b) Comptroller General of the United States, and the Comptroller General's duly authorized representatives, and
  - (c) Recipient and Subrecipient,
- (2) The Recipient will permit and assures that its Third Party Participants will permit the individuals listed above in (1) to do the following:
  - (a) Inspect all:
    1. Project work,
    2. Project materials,
    3. Project payrolls, and
    4. Other Project data, and
  - (b) Audit any information related to the Project under the control of the Recipient or Third Party Participant within:
    1. Books,
    2. Records,
    3. Accounts, or
    4. Other locations.

## **FEDERAL CHANGES**

### Changes to Federal Requirements and Guidance:

- (1) Requirements and Guidance. New Federal Requirements and Guidance may:
  - (a) Become effective after the FTA Authorized Official signs the Recipient's Underlying Agreement awarding funds for the Project, and
  - (b) Apply to the Recipient or its Project.
- (2) Modifications. Federal requirements and guidance that apply to the Recipient or its Project when the FTA Authorized Official awards Federal funds for the Recipient's Underlying Agreement may:
  - (a) Be modified from time to time, and
  - (b) Apply to the Recipient or its Project.
- (3) Most Recent Provisions. The latest Federal requirements will apply to the Recipient or its Project, except as FTA determines otherwise in writing using a:
  - (a) Special Condition in the Recipient's Underlying Agreement,
  - (b) Special Requirement in the Recipient's Underlying Agreement,
  - (c) Special Provision in the Recipient's Underlying Agreement,
  - (d) Condition of Award in the Recipient's Underlying Agreement,
  - (e) Letter to the Recipient signed by an authorized FTA official, or
  - (f) Change to FTA or Federal guidance.

## **CIVIL RIGHTS REQUIREMENTS**

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Specifically:

- (1) Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute):
  - (a) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of:
    1. Race,
    2. Color,
    3. Religion,
    4. National origin,
    5. Sex (including gender identity),
    6. Disability, or
    7. Age, and
  - (b) The FTA "Nondiscrimination" statute's prohibition against discrimination includes:
    1. Exclusion from participation,
    2. Denial of program benefits, or
    3. Discrimination, including discrimination in employment or business opportunity.
- (2) Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will:
  - (a) Prohibit discrimination based on:
    1. Race,
    2. Color, or
    3. National origin,
  - (b) Comply with:
    1. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*,
    2. U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 23, and
    3. Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document, and
  - (a) Except as FTA determines otherwise in writing, follow:
    1. The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance.
    2. U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and
    3. Other applicable Federal guidance that may be issued.
- (3) Equal Employment Opportunity.
  - (a) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:
    1. Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*,
    2. Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and as further amended by

Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014,

3. Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document, and
4. FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients," and
5. Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.

(b) Specifics. The Recipient agrees to:

1. Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their:
  - a. Race,
  - b. Color,
  - c. Religion,
  - d. National Origin,
  - e. Disability,
  - f. Age,
  - g. Sexual Origin,
  - h. Gender identity, or
  - i. Status as a parent, and
2. Take affirmative action that includes, but is not limited to:
  - a. Recruitment advertising,
  - b. Recruitment,
  - c. Employment,
  - d. Rates of pay,
  - e. Other forms of compensation,
  - f. Selection for training, including apprenticeship,
  - g. Upgrading,
  - h. Transfers,
  - i. Demotions,
  - j. Layoffs, and
  - k. Terminations.

(c) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with:

1. U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and
2. Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note

(4) Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows:

(a) Requirements. The Recipient agrees to comply with:

1. Section 1101(b) of MAP-21, 23 U.S.C. § 101 note,
2. U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and

3. Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document.
- (b) Assurance. As required by 49 C.F.R. § 26.13(a), the Recipient provides assurance that:
  1. It shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract.
  2. It shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- (5) Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including:
  - (a) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*,
  - (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance”, 49 C.F.R. part 25, and
  - (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document.
- (6) Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including:
  - (a) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § § 621 – 634, which prohibits discrimination on the basis of age,
  - (b) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA,
  - (c) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § *et seq.*, which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds,
  - (d) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, which implements the Age discrimination Act of 1975, and
  - (e) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document.
- (7) Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities:
  - (a) Federal laws, including:
    1. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,
    2. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities,
    3. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities,
    4. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
    5. Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities.
  - (b) Federal regulations, including:
    1. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.F. part 37,
    2. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27,
    3. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39,

4. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38,
  5. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35,
  6. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36,
  7. U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630,
  8. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F,
  9. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and
  11. FTA Circular 4710.1, "Americans with Disabilities Act: Guidance," and
  12. Other applicable Federal civil rights and nondiscrimination guidance.
- (8) Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of:
- (a) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 *et seq.*,
  - (b) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 *et seq.*, and
  - (c) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.
- (9) Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following:
- (a) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and
  - (b) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005.
- (10) Environmental Justice. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following:
- (a) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and
  - (b) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and
  - (c) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.
- (11) Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to:
- (a) Comply with other applicable Federal nondiscrimination laws and regulations, and
  - (b) Follow Federal guidance prohibiting discrimination.

## **PROMPT PAYMENT OF SUBCONTRACTORS**

The Contractor shall ensure that all Subcontractors and suppliers under this Contract are promptly paid to the fullest extent required by RCW 39.04.250, as may be amended. The Contractor is required to pay each

Subcontractor performing Work under this prime Contract for satisfactory performance of that Work no later than thirty (30) days after the Contractor's receipt of payment for that Work from Kitsap Transit. In addition, the Contractor is required to return any retainage payments to those Subcontractors within thirty (30) days after the Subcontractor's Work related to this Contract is satisfactorily completed and any liens have been secured. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of Kitsap Transit.

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA Circular 4220.1F**

The Recipient agrees not to use FTA funds for third party procurements unless there is satisfactory compliance with Federal requirements. Therefore:

- (1) Federal Laws, Regulations, and Guidance. The Recipient agrees:
  - (a) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affect its third party procurements,
  - (b) To comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 – 19.48, and other applicable Federal regulations that affect its third party procurements in effect now and as may be later amended,
  - (c) To follow the most recent edition and any revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," to the extent consistent with applicable Federal laws, regulations, and guidance, except as FTA determines otherwise in writing, and
  - (d) That although the FTA "Best Practices Procurement Manual" provides additional third party contracting guidance, the Manual may lack the necessary information for compliance with certain Federal requirements that apply to specific third party contracts at this time.

## **ENERGY CONSERVATION**

The Recipient agrees to, and assures its Subrecipients will:

- (1) State Energy Conservation Plans. Comply with the mandatory energy standards and policies of its State energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 *et seq.*, except as the Federal Government determines otherwise in writing, and
- (2) Energy Assessment. Perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

## **TERMINATION PROVISIONS**

The Recipient agrees to all of the following:

- (1) Justification. After providing notice, the Federal Government may suspend, suspend then terminate, or terminate all or any part of the Federal funding awarded for the Project if:
  - (a) The Recipient has violated the Underlying Agreement or FTA Master Agreement (26), especially if that violation would endanger substantial performance of the Project,
  - (b) The Recipient has failed to make reasonable progress on the Project, or
  - (c) The Federal Government determines that continuing to provide Federal funding for the Project does not adequately serve the purposes of the law authorizing the Project,
- (2) Financial Implications.
  - (a) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent the obligations cannot be canceled, and
  - (b) The Federal Government may:

1. Recover Federal funds it has provided for the Project if it determines that the Recipient has willfully misused Federal funds by:
    - a. Failing to make adequate progress,
    - b. Failing to make appropriate use of the Project property, or
    - c. Failing to comply with the Underlying Grant Agreement or FTA Master Agreement (26), and
  2. Require the Recipient to refund:
    - a. The entire amount of Federal funds provided for the Project, or
    - b. Any lesser amount as the Federal Government may determine, and
- (3) Expiration of Project Time Period. Except for a Full Funding Grant Agreements, expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Underlying Agreement.

## **DEBARMENT AND SUSPENSION**

The Recipient agrees that:

- (1) It will not engage Third Party Participants that are debarred or suspended except as authorized by:
  - (a) U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200,
  - (b) U.S. OMB, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto, and
  - (c) Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note,
- (2) It will review the “Excluded Parties Listing System” at <https://epls.gov> (to be transferred to <https://www.sam.gov>), if required by U.S. DOT regulations, 2 C.F.R. part 1200, and
- (3) It will include, and require its Third Party Participants to include a similar condition in each lower tier covered transaction, assuring that all lower tier Third Part Participants:
  - (a) Will comply with Federal debarment and suspension requirements, and
  - (b) Review the “Excluded Parties Listing System” at <https://www.epls.gov> (to be transferred to <https://www.sam.gov>), if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200.

## **PROVISIONS FOR RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION**

The Recipient understands and agrees that:

- (1) FTA Interest. FTA has a vested interest in the settlement of any disagreement involving the Project including, but not limited to:
  - (a) A major dispute,
  - (b) A breach,
  - (c) A default, or
  - (d) Litigation,
- (2) Notification to FTA. If a current or prospective legal matter that may affect the Federal Government emerges:
  - (a) The Recipient agrees to notify immediately:
    1. The FTA Chief Counsel, or
    2. The FTA Regional Counsel for the Region in which the Recipient is located,
  - (b) The types of legal matters that require notification include, but are not limited to:
    1. A major dispute,
    2. A breach,
    3. A default,
    4. Litigation, or



5. Naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason, and
- (c) The types of matters that may affect the Federal Government include, but are not limited to:
  1. The Federal Government's interests in the Project, or
  2. The Federal Government's administration or enforcement of Federal laws or regulations,
- (3) Federal Interest in Recovery
  - (a) General. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the Federal share for the Project, but
  - (b) Liquidated Damages. Notwithstanding the preceding section XI.(1) of this document, the Recipient may return all liquidated damages it receives to its Project Account rather than return the Federal share of those liquidated damages to the Federal Government,
- (4) Enforcement. The Recipient agrees to pursue its legal rights and remedies available under:
  - (a) Any third party agreement,
  - (b) Any Federal law or regulation,
  - (c) Any State law or regulation, or
  - (d) Any local law or regulation,

### **BYRD ANTI-LOBBYING AMENDMENT**

The Recipient agrees that, as provided by 31 U.S.C. § 1352(a):

- (1) Prohibition on Use of Federal Funds. It will not use Federal funds:
  - (a) To influence any:
    1. Officer or employee of a Federal agency,
    2. Member of Congress,
    3. Officer or employee of Congress, or
    4. Employee of a Member of Congress,
  - (b) To take any action involving the Project or the Underlying Agreement for the Project, including any:
    1. Award,
    2. Extension, or
    3. Modification,
- (2) Laws and Regulations. It will comply, and will assure that each Third Party Participant complies with:
  - (a) 31 U.S.C. § 1352, as amended,
  - (b) U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20, to the extent consistent with as necessary by 31 U.S.C. § 1352, as amended, and
  - (c) Other applicable Federal laws and regulations prohibiting the use of Federal funds for any activity concerning legislation or appropriations designed to influence:
    1. The U.S. Congress, or
    2. A State legislature, but
- (3) Exception. The prohibitions of (1)-(2) above do not apply to an activity that is undertaken through proper official channels, if permitted by the underlying law or regulations.

### **CLEAN AIR & CLEAN WATER**

The Recipient agrees to include adequate provisions in each third party agreement exceeding \$150,000 to ensure that each Third Party Participant will agree to:

- (1) Report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities,"

- (2) Refrain from using any violating facilities,
- (3) Report violations to FTA and the Regional U.S. EPA Office, and
- (4) Comply with the inspection and other requirements of:
  - (a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other requirements of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q, and
  - (b) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1388.

## **FLY AMERICA**

The Contractor agrees to comply with 49 USC 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.

## **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

## **SOLID WASTES**

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **SOLID WASTES**

The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 C.F.R Part 41, and will certify to compliance to the extent required by the Regulation. The Consultant also agrees to ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **SIMPLIFIED ACQUISITION THRESHOLD**

Contracts for more than the simplified acquisition threshold, currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address

administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.326. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

**FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

The following transactions are prohibited and Third-Party Participant certifies that -

- (1) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (2) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

**LOBBYING CERTIFICATION**

The Proposer certifies, to the best its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification thereof.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal Contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**THE PROPOSER, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.**

**Name of the Proposer's authorized official:** \_\_\_\_\_

**Title:** \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**THIS FORM MUST ACCOMPANY PROPOSAL**

# ATTACHMENT A

## PROTEST AND APPEAL POLICY

### A. Purpose

To establish policies for vendor or service provider complaints and protests to ensure fair and open competition.

### B. Complaint Policy

#### Who May Submit a Complaint

A potential bidder demonstrating a substantial economic interest in Kitsap Transit's competitive bid process.

#### Timing of Complaint

Complaints must be received five business days prior to bid response deadline.

#### Basis of Complaint

Complaints must be based on the following criteria:

1. The solicitation unnecessarily restricts competition
2. The solicitation evaluation process is unfair or flawed
3. The solicitation requirements are insufficient to prepare a response

#### Complaint Form and Content

1. Complaints must be in writing
2. Complaints must be addressed to the Purchasing Coordinator
3. Complaints must clearly articulate the basis for the complaint
4. Complaints must include proposed remedy

#### Kitsap Transit Response to Complaint

The Purchasing Coordinator will respond to complaints in writing within three business days of receipt.

### C. Protest and Appeal Policy

#### Who May Protest or Appeal

A potential bidder demonstrating a substantial economic interest in Kitsap Transit's competitive bid process.

#### Timing of Protest

A protest must be filed within five business days of the award of a contract or notice of apparent successful proposer/bidder, whichever is sooner.

#### Basis of Protest

Protests must be based on the following criteria:

1. A matter of bias, discrimination, or conflict of interest
2. Non-compliance with procedures described in the procurement documents
3. Error in computing scores

#### **Protest Form and Content**

1. Protests must be in writing
2. Protests must be addressed to the Purchasing Coordinator
3. Protests must clearly articulate specific grounds for the protest and include supporting documentation
4. Protests must include proposed remedy

#### **Protest Procedure**

A protest must be filed with Kitsap Transit's Purchasing Coordinator within five business days of the award of a contract or notice of apparent successful proposer/bidder, whichever is sooner. Upon receipt of a timely written protest, the Purchasing Coordinator will consider the protest in accordance with established procedures and issue a written decision within five business days stating the reasons for the action taken and informing the allegedly aggrieved vendor or service provider (Protesting Vendor) of his/her right to appeal the decision.

#### **Appeal Procedure**

An appeal must be filed within five business days of the Purchasing Coordinator decision. The Finance Director and the procurements originating Department Director will consider the appeal and issue a written decision within five business days informing the Protesting Vendor of his/her right to further appeal the decision.

In the event the Protesting Vendor elects to continue the appeal process, a request for a second appeal must be filed within five business days of the decision of the first appeal. The Executive Director and general counsel will consider the appeal and issue a written decision within ten business days. The decision of the second appeal will be final and conclusive.

#### **Failure to Comply with Requirements**

Failure to comply with the protest and appeal requirements will render a protest or an appeal untimely or inadequate and may result in rejection thereof.

#### **Exhausted Administrative Remedies**

A Protesting Vendor may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the Protesting Vendor rights, if any, to commence litigation.

**ATTACHMENT B**

# ***SAMPLE KITSAP TRANSIT***

## **CONSULTANT AGREEMENT**

**KITSAP TRANSIT # XX-XXX**

**{Project Name}**

***KITSAP TRANSIT***

60 Washington Ave., Ste. 200  
Bremerton, Washington 98337  
(360) 824-4905  
(360) 377-7086 Facsimile

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# KITSAP TRANSIT

## SAMPLE CONSULTANT AGREEMENT

THIS AGREEMENT, made and entered into in duplicate this \_\_\_ day of \_\_\_\_\_, 20xx, by and between KITSAP TRANSIT, a Washington municipal corporation, hereinafter referred to as "TRANSIT", and \_\_\_\_\_, hereinafter referred to as "CONSULTANT."

WITNESSETH:

WHEREAS, TRANSIT desires to have certain services and/or tasks performed as hereinafter set forth requiring specialized skills and other supportive capabilities, hereinafter referred to as the "Project," and

WHEREAS, CONSULTANT represents that CONSULTANT is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, to perform the services and/or tasks set forth in this Agreement.

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

### **ARTICLE 1** **OVERALL PROJECT**

#### **1.1 RELATIONSHIP OF PARTIES**

The CONSULTANT covenants with TRANSIT to furnish the CONSULTANT's reasonable skill and judgment in furthering the interests of TRANSIT. The CONSULTANT shall furnish memos, reports, spreadsheets or other appropriate documents, and use the consultant's best effort to perform the work in this Agreement in an expeditious and economical manner consistent with the interest of TRANSIT. The CONSULTANT shall endeavor to promote harmony and cooperation with the other governmental parties and agencies involved with the Project, TRANSIT, and other persons or entities essential to the Project.

#### **1.2 GENERAL SCOPE OF SERVICES**

CONSULTANT shall perform such services and accomplish such tasks, including the furnishing of all materials, documentation, and equipment necessary for full performance thereof, as are identified and designated as CONSULTANT responsibilities throughout this Agreement and as detailed in exhibits attached hereto and incorporated herein.

Exhibit X: Request for Qualification, Project KITSAP TRANSIT #XX-XXX

Released: xx/xx/20xx

Exhibit X: Addenda X, Project KITSAP TRANSIT #XX-XXX

Released: xx/xx/20xx

Exhibit X: Consultant's Response to RFQ

Issued: xx/xx/20xx

#### **1.3 TERM OF THE AGREEMENT**

CONSULTANT shall not begin work under the terms of this Agreement until authorized by the signing of this Agreement. The services under this Agreement are directly related to and shall be coordinated with the Project Schedule. The time for completion is \_\_\_\_\_.

The established completion time shall not be extended because of any delays attributable to CONSULTANT, but may be extended by TRANSIT in the event of a delay attributable to TRANSIT or because of unavoidable delays caused by an Act of God, governmental actions or other conditions beyond the control of CONSULTANT.

## **ARTICLE 2**

### **GENERAL PROVISION**

#### **2.1 ASSIGNMENT/SUBCONTRACTING**

- A. CONSULTANT shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of TRANSIT, and it is further agreed that said consent must be sought in writing by CONSULTANT not less than seven days prior to the date of any proposed assignment. TRANSIT reserves the right to reject without cause any such assignment.
- B. TRANSIT permits subcontracts for those items of work as shown in EXHIBIT (X) attached hereto and made a part hereof. The parties understand that subconsultants may be added or deleted during the course of the Agreement. EXHIBIT (X) may be amended as the need arises, upon mutual agreement of the parties, without a formal amendment to this Agreement. All terms, conditions, covenants and performances contained herein by and between the CONSULTANT and TRANSIT shall be required of the subconsultant and made part of any subconsultant agreement.

#### **2.2 ATTORNEYS FEES AND COSTS**

If any legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the covenants, terms, conditions, OR provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and costs incurred in such action or proceeding.

#### **2.3 CHANGES**

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing, and signed by both parties. Such amendments shall be attached to and made a part of this Agreement.

CONSULTANT shall not incur additional cost which would modify the amount of the compensation established in EXHIBIT (X), except as TRANSIT may specifically authorize in writing.

CONSULTANT shall make all such changes and revisions in the completed work of this Agreement as are necessary to correct errors appearing therein, when required to do so by TRANSIT, without additional compensation therefore.

#### **2.4 COMMUNICATIONS**

Communications in connection with this Agreement shall be in writing and shall be delivered personally; or by facsimile, or by regular, registered, or certified mail addressed to the TRANSIT Representative designated to receive such communications. Communications shall be considered received at the time actually received by the addressee. Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing. All telephone communication shall be directed to the Project Manager (designated representative) as appropriate.

#### **2.5 DISPUTE RESOLUTION**

TRANSIT's Protest and Appeal Procedures (ATTACHMENT C of the RFQ) are to be used for the resolution of disputes.

#### **2.6 JURISDICTION**

- A. This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

- B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Kitsap County, Washington.

## 2.7 RESERVED

## 2.8 MEDIATION

As a condition precedent to the hearing of any trial or arbitration, the Parties shall submit any and all disputes between them to non-binding mediation with the assistance of an experienced mediator. The Parties shall each designate a representative with full settlement authority who will participate for at least four hours in mediation. The Parties shall share equally all expenses, exclusive of attorney's fees, associated with the mediation.

## 2.9 NOTICE

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

## 2.10 REQUESTS FOR ARBITRATION

Requests for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A request for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the request for arbitration be made after the date when institution of legal or equitable proceedings based on such claims, dispute or other matter in question would be barred by the applicable statutes of limitations.

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## 2.11 SEVERABILITY

- A. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is held by the courts to be illegal, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision, which may conflict therewith, shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

## 2.12 TERMINATION

- A. **TERMINATION FOR CONVENIENCE:** The performance of work under this Agreement may be terminated by TRANSIT in accordance with this clause in whole, or from time-to-time in part, whenever TRANSIT shall determine that such termination is in its best interests. Any such termination shall be effected by delivery to the CONSULTANT of a Notice of Termination specifying the extent to which performance of service under the Agreement is terminated, and the date upon which such termination will become effective.

After receipt of a Notice of Termination, and except as otherwise directed by TRANSIT, the CONSULTANT shall stop work under the Agreement on the date and to the extent specified in the Notice of Termination.

Settlement of claims by the CONSULTANT under this Termination of Convenience clause shall be in accordance with the provisions set forth in the Federal Acquisition Regulations, except that wherever the word "Government" appears it shall be deleted and the words "KITSAP TRANSIT" shall be substituted in lieu thereof.

- B. **TERMINATION FOR DEFAULT:** TRANSIT may, by written notice of default to the CONSULTANT, terminate the whole or any part of this Agreement if the CONSULTANT fails to perform the services within the time specified herein or any extension thereof; or if the CONSULTANT fails to perform any of the provisions of the contract, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances does not cause such failure to be corrected within

a period of ten (10) business days (or such longer period as TRANSIT may authorize in writing) after receipt of notice from TRANSIT specifying such failure.

If the Agreement is terminated in whole or in part for default, TRANSIT may procure, upon such terms and in such manner, as TRANSIT may deem appropriate, supplies or services similar or those so terminated. The CONSULTANT may be liable to TRANSIT for excess costs for such similar services and shall continue the performance of this Agreement to the extent not terminated under the provisions of this clause.

Except with respect to defaults of sub-consultants, the CONSULTANT shall not be liable for any excess costs if the failure to perform the Agreement arises out of cause beyond the control and without the negligence of the CONSULTANT. If the failure to perform is caused by the default of a sub-consultant, and if such default arises out of causes beyond the control of both the CONSULTANT and the sub-consultant, and without the negligence of either of them, the CONSULTANT shall not be liable for any excess costs for failure to perform, unless the services to be furnished by the sub-consultant were obtainable from other sources to provide the services required.

Payment for services and accepted by TRANSIT shall be at the price specified in the Agreement. TRANSIT may withhold from amounts otherwise due the CONSULTANT for services provided such sum as TRANSIT determines to be necessary to protect TRANSIT against loss because of outstanding liens or claims of former lien holders.

If, after Notice of Termination of this Agreement under the provisions of this clause, it is determined for any reason that the CONSULTANT was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to Termination of Convenience of TRANSIT.

The rights and remedies of TRANSIT provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

### **2.13 TREATMENT OF ASSETS**

Title to all property furnished by TRANSIT shall remain in the name of TRANSIT and TRANSIT shall become the owner of the work product and other documents, if any, prepared by CONSULTANT pursuant to this Agreement unless otherwise expressly provided herein.

## **ARTICLE 3 COMPENSATION, PAYMENTS AND RECORDS**

### **3.1 ACCOUNTING RECORDS**

The CONSULTANT shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this agreement; the accounting and control systems shall be satisfactory to TRANSIT. The CONSULTANT shall preserve records, books, correspondence, instructions, drawings, subcontracts, purchase orders, memoranda and other data relating to this Agreement for a period of three years after final payment, or for such longer period as may be required by law.

### **3.2 AUDIT AND INSPECTION OF RECORDS**

TRANSIT, the State Auditor, the Comptroller General for the United States, or any of their duly authorized representatives, shall, until three (3) years after final payment under this Agreement or for any shorter period specified, have access to and the right to examine any of the CONSULTANT's directly pertinent books, documents, papers or other records involving transactions related to this Agreement, and may request copies of specific documents at no charge to TRANSIT. These same requirements apply for any subconsultant.

### **3.3 CHANGE ORDER PROCEDURE**

A. Oral change orders are not permitted. No change in this Agreement shall be made unless Kitsap Transit's Project Manager (designated representative) gives his/her prior written approval thereto. The CONSULTANT shall be liable for all costs resulting from, and/or for satisfactorily correcting, any

specification change not properly ordered by written modification to the Agreement and signed by Kitsap Transit's Capital Development Director.

- B. Exhibit (X) includes a firm fixed fee price and the schedule for the work to be performed. This proposal is accepted and may be modified by negotiations between the CONSULTANT and Kitsap Transit's Project Manager. At that time, both parties shall execute a detailed modification in writing.

Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the Agreements Dispute Resolution Clause (ATTACHMENT C of the RFQ).

- C. Any proposed change in this Agreement shall be submitted to Kitsap Transit, or designated members thereof, for prior written approval. Subject to this prior approval, Kitsap Transit's designated representative may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this agreement, and/or the drawings, designs or specifications.

If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Agreement, whether changed or not changed by any such order, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Any claim by the CONSULTANT for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the CONSULTANT of the notification of change; provided, however, that Kitsap Transit's designated representative, if she or he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

### **3.4 COMPENSATION AND METHOD OF PAYMENT**

- A. Payments for services provided hereunder shall be made following the performance of such service, unless otherwise permitted by law and approved in writing by TRANSIT. No payment shall be made for any service rendered by CONSULTANT except for services identified and set forth in this Agreement.
- B. TRANSIT shall pay CONSULTANT for work performed under this Agreement compensation on a fixed fee not-to-exceed basis as described in EXHIBIT (X) attached hereto and made a part hereof.
- C. Payments shall be made following presentation of CONSULTANT invoices and progress report. Invoices shall be prepared monthly on the basis of the work described in EXHIBIT A estimated to be completed that month and at a percentage of the total cost of services to be performed.

Payments are due and payable within thirty (30) days from the date the CONSULTANT's invoice is received by the TRANSIT.

### **3.5 OWNERSHIP OF DOCUMENTS**

The original documentation and data furnished to CONSULTANT by TRANSIT shall be returned. All designs, drawings, specifications, documents, and other work products prepared by CONSULTANT are instruments of service for this Agreement, and are property of TRANSIT. Reuse by TRANSIT or by others acting through or on behalf of TRANSIT of any such instruments of service not occurring, as a part of this Agreement shall be without liability or legal exposure to CONSULTANT.

The drawings, specifications and any other design and planning documents produced by or provided to the CONSULTANT, and other key professionals employed by the CONSULTANT shall become the property of TRANSIT, but the use of these documents shall be approved in writing by the CONSULTANT and reasonable request for release from liability by the CONSULTANT shall be granted by TRANSIT.

All designs, drawings, specifications, technical data and other documents or information produced by CONSULTANT in the performance of this Agreement shall be the sole property of TRANSIT, and TRANSIT is vested with all rights therein of whatever kind and however created, provided however any design documents not stamped and signed by appropriate registered professional architects or engineers shall be deemed to be incomplete and requiring further review or design completion.

None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

TRANSIT shall not reuse any documents, reports, materials, or other subject matter provided by CONSULTANT hereunder for other than the project defined by the Agreement without prior written consent of CONSULTANT, which shall not be unreasonably withheld. TRANSIT shall, in any event, indemnify, defend and hold CONSULTANT harmless from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages and liability caused by, resulting from, or arising out of such reuse. CONSULTANT is not liable for TRANSIT or third party misuse of any documents, reports, records, plans, or materials prepared, procured, or produced in the rendition of services under this Agreement.

### **3.6 PATENT RIGHTS**

Any patentable result arising out of this Agreement, as well as all information, designs, specifications, know-how, data, and findings shall be made available to the Government for public use, unless TRANSIT shall, in a specific case where it is legally permissible, determine that it is in the public interest that it not be so made available.

### **3.7 INDEPENDENT CONSULTANT RELATIONSHIP**

A. The parties intend that an independent CONSULTANT/TRANSIT relationship will be created by this Agreement. TRANSIT is interested primarily in the results to be achieved; subject to the provisions herein, the implementation of services will lie solely with the discretion of CONSULTANT. No agent, employee, servant or representative of CONSULTANT shall be deemed to be an employee, agent, servant or representative of TRANSIT for any purpose, and the employees of CONSULTANT are not entitled to any of the benefits TRANSIT provides to its employees. CONSULTANT will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subconsultants or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated, CONSULTANT is an independent consultant with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of TRANSIT and shall be subject to TRANSIT's general rights of inspection and review to secure the satisfactory completion thereof.

### **3.8 WARRANTY OF TITLE**

CONSULTANT shall warranty to TRANSIT its successors and assigns, that the deliverables covered by the Agreement, when delivered to TRANSIT or to its successors or assigns, is free from all liens and encumbrances.

## **ARTICLE 4**

### **TRANSIT PROVISIONS**

#### **4.1 PROCUREMENT OF, ARCHITECTURAL ENGINEERING, DESIGN, OR RELATED SERVICES**

In acquiring architectural, engineering, design or related services, Transit agrees to comply with the requirements of 49 U.S.C. §5325(d), by contracting for architectural, engineering, design or related services in the same way as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 541 et seq., or an equivalent qualifications-based requirement of the state. Provided a sufficient number of qualified firms are eligible to compete for the third party contract, geographic location may be a selection criterion. This section does not apply to the extent a state has adopted or adopts by law formal procedures for procuring those services.

#### **4.2 INFORMATION**

TRANSIT shall provide full information in a timely manner regarding the requirements of the Project, including any additional information about its program which sets forth TRANSIT's objectives, constraints and criteria, including preliminary space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

#### **4.3 STATEMENT OF FINANCIAL ASSISTANCE**

This Agreement is subject to receipt of financial assistance by TRANSIT from the Federal Transit Administration. TRANSIT shall arrange such assistance or other funding prior to authorizing the work of this Agreement to start. In the event the work of this Agreement is started and such financial assistance or other funding is not available, TRANSIT may terminate this Agreement in accordance with Article 2.12 Termination for Convenience.

**4.4 TRANSIT'S DESIGNATED REPRESENTATIVE**

TRANSIT shall designate a Project Manager who shall have express authority to bind TRANSIT with respect to all matters requiring TRANSIT approval or authorization. This representative shall have the authority to make decisions on behalf of TRANSIT subject to TRANSIT board approvals as required, concerning scope of work, schedules, review of budgets, and changes in the work of this Agreement without further formal TRANSIT action, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay of the CONSULTANT and the Project.

**ARTICLE 5**

**Reserved**

**ARTICLE 6**

**SCHEDULE**

**6.1 SCHEDULE FOR THE WORK**

The work of this Agreement shall be commenced on signing of this Agreement. The services under this Agreement are directly related to and shall be coordinated with the Project Manager.

**6.2 NOTIFICATION OF DELAY**

The CONSULTANT shall notify the TRANSIT designated representative as soon as the CONSULTANT has, or should have, knowledge that an event has occurred, which will delay deliveries. Within five (5) calendar days, the CONSULTANT shall confirm such notice in writing, furnishing as much detail as possible.

**ARTICLE 7**

**LABOR PROVISIONS**

**7.1 SAFETY AND HEALTH STANDARDS**

CONSULTANT shall be responsible for safety of CONSULTANT's employees and shall cause its Subconsultants to be responsible for the safety of its employees. CONSULTANT is not responsible for the safety of any other person working on this Project.

**7.2 DISADVANTAGED BUSINESS ENTERPRISES**

A. In connection with the performance of this contract, CONSULTANT will cooperate with TRANSIT in meeting its aspirational goal with regard to the maximum utilization of disadvantaged businesses and will use good faith efforts to ensure that disadvantaged businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract. The agency's overall goal for DBE participation is 2.93% for 2017.

B. Further, TRANSIT and CONSULTANT agree to ensure that disadvantaged businesses as defined in 49 CFR, Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, TRANSIT and CONSULTANT shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23, to ensure that disadvantaged businesses have the maximum opportunity to compete for and perform contracts. TRANSIT and CONSULTANT shall not discriminate on the basis of race, color, religion, national origin, sex, disability, or

age, and in employment or business opportunity. CONSULTANT shall complete Contractor Good Faith Effort DBE Certification on the signing of this agreement **and again at its completion.**

C. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. The successful bidder/offeror will be required to complete a DBE participation report at the beginning of construction, completion of construction, and at times there is a change in DBE subcontractors.

D. **PROMPT PAYMENT:** The contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Kitsap Transit. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of the contract, the suspension of retainage of this contract or such other remedy as Kitsap Transit deems appropriate.

E. The contractor must report when a DBE subcontractor previously reported to Kitsap Transit to be performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform the work.

F. Kitsap Transit reserves the right to monitor reported DBE participation or the contractors required performance with respect to DBE's as Kitsap Transit deems appropriate.

## **ARTICLE 8**

### **CONSULTANT PROVISIONS**

#### **8.1 CONSULTANT RESPONSIBILITY FOR QUALITY**

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services which shall mean such services not meeting the standard of care as defined in Section 1.2 of this Agreement.
- B. Neither TRANSIT's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.

#### **8.2 COMPLIANCE WITH LAWS**

- A. CONSULTANT, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs, accreditation, and licensing of individuals. The CONSULTANT shall comply with any other standards or criteria as described in this Agreement to assure quality of services.
- B. CONSULTANT specifically agrees to pay any applicable business and occupation (B&O) taxes, which may be due on account of this Agreement.
- C. This Agreement shall be governed by the pertinent requirements included in Federal Transit Administration Circular 4220.1F as amended and the attached CERTIFICATIONS

#### **8.3 DEBARRED BIDDERS**

Neither CONSULTANT, nor any officer or controlling interest holder of CONSULTANT, is currently, or has been previously, on any debarred bidders list maintained by the United States Government.



**8.4 HOLD HARMLESS AND INDEMNIFICATION**

CONSULTANT shall defend, protect, indemnify and hold harmless TRANSIT and its agents, employees and/or officers from and against any and all claims, suits, actions, damages, and liability whatsoever, which TRANSIT may incur by reason of any negligent act, action, neglect, omission or default on the part of CONSULTANT provided, however, that if such liability is caused by or results from the concurrent negligence of TRANSIT, its agents, employees, and/or officers, and CONSULTANT or its agents and employees, this provision shall be valid and enforceable only to the extent of CONSULTANT’s negligence.

If a lawsuit subject to this hold harmless provision ensues, the CONSULTANT shall appear and defend that lawsuit at its own cost and expense to the extent of its negligence.

**8.5 PAROL AGREEMENT**

All prior or contemporaneous communications, representations or agreements, whether oral or written, with respect to the subject matter thereof which are inconsistent with this Agreement are hereby superseded. No amendment hereafter made between the Parties shall be binding on either Party unless reduced to writing and signed by an authorized representative of the Party sought to be bound thereby. No provision of this Agreement is intended or shall be construed to be for the benefit of any third party.

**8.6 PROHIBITED INTEREST**

No member, officer or employee of TRANSIT shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**8.7 SEVERABILITY**

Should any part, term, or provision of this Agreement be decided by the Courts to be illegal or in conflict with any applicable statute or regulation, the validity of the remaining portions or provision shall not be affected thereby.

**8.8 SUCCESSORS**

TRANSIT and CONSULTANT respectively bind themselves, their partners, successors, assigns and legal representatives to the other party in respect to covenants, agreement and obligations contained in the Agreement. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

**8.9 SURETIES**

If at any time during the continuance of the Agreement, the sureties, or any of them, shall in the opinion of TRANSIT become untrustworthy, TRANSIT shall have the right to require additional and sufficient sureties, which the CONSULTANT shall furnish to the satisfaction of TRANSIT within ten (10) days after notice.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the exoneration of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first herein above written.

**KITSAP TRANSIT**

**CONSULTANT**