



**60 Washington Ave, Suite 200
Bremerton, WA 98337
Ph: 360-479-6960**

REQUEST FOR QUALIFICATIONS

CONSTRUCTION MANAGEMENT SERVICES SILVERDALE TRANSIT CENTER PROJECT

RFQ KT # 21-708

April 27, 2021

Proposals are due May 13, 2021; 10:00 A.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.



**Federal Transit Administration
Grant Funded**

Section 1: Announcement

Advertisement Post Date: April 27, 2021

Kitsap Sun; Kitsap Transit Website: www.kitsaptransit.com; OMWBE;

Request for Qualifications

KT # 21-708 CM Silverdale Transit Center Project

Scope of Work: The Work includes professional services to provide construction management services for the Silverdale Transit Center Construction project. This scope of work describes the Work Elements to be accomplished by the Consultant as summarized under each work element. This scope consists of the following work elements:

- Task 1: Project Administration and Management
- Task 2: Bid Support
- Task 3: Construction Administration
- Task 4: Construction Observation
- Task 5: Construction Design Support and Special Inspections
- Task 6: Earthwork & Material Testing

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

Pre-Proposal Meeting: A Pre-Proposal conference is not being offered. All requests for clarifications will need to be submitted in writing by the date listed below.

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 May 5, 2021** at: Kitsap Transit, Attn: Patrick Rogers, 60 Washington Ave., Ste. 200, Bremerton, WA 98337; or e-mail: patrickr@kitsaptransit.com.

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

Time for Completion: The Contractor shall commence the Work under this Contract effective upon receipt of a written Notice to Proceed and shall continue in good faith and effort to Final Completion. It is anticipated that this project will run from June 2021 to the end of construction approximately December 2022.

Proposal Due Date: Proposals will be received at **via email at**, patrickr@kitsaptransit.com until **10:00 AM on May 13, 2021**. When the official clock reads 10:00:01 AM, 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	April 27, 2021
Request for Clarification/Substitutions Due	5:00 PM May 5, 2021
Proposal Due Date	10:00 AM May 13, 2021
Anticipated Award Date	*May 20, 2021
Board Award	*June 1, 2021

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: Introduction and Instructions to Proposers

2.1 Introduction:

This project involves the construction of a new eight-bay Bus Transit Center and Roadway in Silverdale, WA. The work includes clearing and grubbing, grading, removals, Hot Mix Asphalt and cement concrete pavement, cement concrete curb, gutter, sidewalk, curb ramps, stormwater treatment, drainage, striping, signing, landscaping, illumination and surveillance systems, erosion control measures, bus shelters, and building for drivers' comfort station. The time limit for project completion is a total of 260 working days.

The Consultant will provide construction management services for Kitsap Transit (The Agency). The Consultant will endeavor to protect Kitsap Transit against defects and deficiencies in the work of the Contractor.

Interested parties are encouraged to submit a Proposal in accordance with the requirements set forth in the **RFQ NO LATER THAN 10:00 a.m., May 13, 2021**. When the official clock reads 10:00:01 AM, 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, various 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:

Proposals will be received via email NO LATER THAN **10:00 A.M. on May 13, 2021** and must be emailed to: patrickr@kitsaptransit.com . Late proposals will not be considered for award.

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.

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 **May 5, 2021** 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 Review of Documents:

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 by **May 5, 2021, 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.

2.8 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.

2.9 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.

2.10 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.

2.11 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.

2.12 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.

2.13 Non-Collusion Affidavits:

Proposer shall submit, with its Proposal, an affidavit (ATTACHMENT 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.

2.14 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.

2.15 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.

2.16 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.

2.17 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.

2.18 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 2021 is 2.93%, the full text of which may be found at <http://www.kitsaptransit.com/agency-information/procurement>.

2.19 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/executedtitleviijune2011.pdf> for the full text of the above Civil Rights statements.

2.20 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.

2.21 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.

2.22 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.

2.23 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.*

2.24 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.

2.25 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.

2.26 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.

2.27 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

2.28 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.

2.29 Federal Contract Clauses

The Contractor shall certify that it has read and understood the attached FTA Contract Clauses and Certifications as they pertain to project using Exhibit B, "Contractors Certification of Acknowledgment Federal Transit Administration Contract Clauses and Certifications FTA Master Agreement 26, October 1, 2020." These clauses are non-negotiable.

2.30 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

This agreement includes professional services to provide construction management services for the Silverdale Transit Center. This scope of work describes the Work Elements to be accomplished by the Consultant as summarized under each work element. This scope consists of the following work elements:

- Task 1: Project Administration and Management
- Task 2: Bid Support
- Task 3: Construction Administration
- Task 4: Construction Observation
- Task 5: Construction Design Support and Special Inspections
- Task 6: Earthwork & Material Testing

Construction Management Services

The scope of services by the Consultant for the federally funded Silverdale Transit Center project is summarized below. These services will include project management, meetings and correspondence, contract administration, review of submittals, and construction observation for Kitsap Transit as required for the construction of the project, as detailed below.

- Construction survey and staking to be provided by the Contractor per the Contract Provisions.
- The Contractor will provide a field office for the Construction Management Team as specified in the Contract Documents.
- Consultant will prepare the conformed plans and specifications. The Agency will provide copies of the conformed plans and specs to all parties.
- The Consultant will be responsible for all permits and any inspections related to permit requirements.
- Prior to the start of construction, Consultant will prepare a photo log of the construction site. Updates will be provided weekly throughout the duration of the contract.
- The Record of Materials (ROM) will be prepared by Consultant.
- The Consultant will prepare suspension letters and letters acknowledging substantial completion and final completion for Agency signature and approval.
- The Consultant will administer the project and contract during the one-year PSIFE plant establishment period.
- The scope of services includes "Building Commissioning" or "Building Commissioning Services."

1. Project Administration and Management

1.1. Provide project management of the Consultant team. This will include:

- Project staff management and coordination with outside consultants and services
- Control of project budget and schedule
- Preparation of monthly invoices and progress reports.

- 1.2. Maintain on-going contact with the Agency's Project Manager via informal meetings, telephone discussions, and electronic mail.
- 1.3. Manage consultants/subconsultants as required for site visits, project reporting, project reviews, and general project coordination.
- 1.4. Monitor the project for potential claims or protests by the Construction Contractor, advise the project team and the Agency of potential claims, and provide support on resolving conflicts and negotiations with contractor on contractor claims or protests if any arises.
- 1.5. Provide monthly reporting of project budget status and consultant budget status. Percent of budget expended and estimation of project completion will be provided.

2. Bid Support

Consultant will support Kitsap Transit during the procurement bid period.

Work Elements:

- Attend pre-bid meeting.
- Respond to RFIs.
- Prepare supporting documentation for addendums.
- Review and evaluate construction bids with project team

3. Construction Administration

Provide documentation and record keeping in compliance with grant requirements.

- 3.1. Project File/Records and documentation setup. Project filing Index will be based on the Consultant's file index unless requested otherwise.
- 3.2. The Consultant will organize and facilitate the project Preconstruction Conference and coordinate meeting facility and meeting date. The Consultant will prepare the meeting agenda and meeting notes and distribute PDF copies of meeting minutes, to all attendees for review.
- 3.3. In general, Consultant will monitor Materials Approval and Material Acceptance for elements of work and compliance with Federal Transit Administration (FTA), Kitsap County, and Washington State requirements. Specific materials tracking will be the responsibility of the contractor coordinating with the Materials Laboratory. In general, Consultant will maintain Materials Documentation as follows:
 - Review project records on an ongoing basis to ensure proper approval of all materials are incorporated into the project.
 - Receive and review Contractor provided log of all Construction Contractor submittals. Transmit submittals to Consultant's office staff, and Agency, subconsultants, and utilities as needed for review. Return submittals to the Construction Contractor upon completion of the review process. Review contractor provided submittal files.
 - Review Contractor Submitted request for approval of material sources to determine compliance with contract documents, including but not limited to, FTA Buy America requirements (if required).

- Collect test reports from the materials testing lab for compliance with the information given in the contract documents.
- Receive all requests for information (RFIs) from the Construction Contractor. Coordinate Responses to RFIs with the Agency and Design Consultant. Respond to RFIs with clarifications and interpretations of the Contract Documents as appropriate and necessary.
- Consultant will review all Change Orders and Field Directives. Recommend Change Orders and Field Directives to the Agency, as appropriate.
- Review Contractor submitted requests for payment based on completed work and provide comments to Contractor and the Agency for approval and payment.
- Prepare weekly project meeting agendas and conduct weekly scheduled meetings with the Construction Contractor, to review the progress of the work and identify and address field issues. Record reports of any significant concerns and problems and forward to the Consultant Design Team and the Agency. Prepare meeting minutes, and distribute PDF copies of minutes to attendees.
- Review and monitor Contractor's compliance with construction schedule based upon updates submitted by the Contractor. Assist the Agency in verification, documentation, and/or negotiation of time extensions requested by the Contractor. Evaluate potential schedule impacts of all change order work.
- Conduct Contractor employee interviews, review certified payroll for compliance at random intervals, document and file results.
- Coordination with jurisdictional permitting and inspection personnel in cooperation with the Contractor
- Obtain Notice of Intent to Pay Prevailing Wage and Affidavit of Wages Paid.
- Maintain orderly electronic records and files at the job site. These records and files may include, but are not limited to:
 - Updated contract documents including any design revisions, field directives, and change orders.
 - Preconstruction and Construction Progress Photos.
 - Daily Inspection Reports.
 - Materials Approvals.
 - Material Acceptance Verification.
 - Test Reports.
 - Contractor's Schedules.
 - Progress Payment Documentation and Backup.
 - Prevailing Wage Certifications.
 - Certified Payroll.

3.4 At completion of the project, Consultant will provide electronic files of all documentation to the Agency. Additional paper files will be kept per grant requirements and will also be provided to the Agency upon project completion.

4. Construction Observation

Provide services of Construction Observation to observe and verify by measurements the technical conduct of the construction, including providing day-to-day contact with the Contractor Jurisdictional Personnel and the Agency. This scope is based on the assumption that one full-time construction

observer would be provided by the Consultant; 40 hours of onsite presence per week including meetings.

- 4.1. Provide on-site observation and monitoring to observe the technical conduct and progress of the construction. The Construction Observer shall not be responsible for the means, methods, techniques, or procedures of the construction selected by the Construction Contractor(s) or for any failure of Construction Contractor(s) to comply with laws, ordinances, rules, or regulations applicable to the construction work. The parties recognize that the Construction Contractor(s) is responsible for ensuring that construction is in accordance with the plans and specifications.
 - 4.1.1. Project Daily Report. Prepare daily construction reports, detailing the Construction Contractor's operations performed for each day, and records decisions and observations of a general or specific nature in chronological order. Log equipment and staff used, and other related items.
 - 4.1.1.1. Verify in the daily report that the Contractor is working with the proper traffic control plans.
 - 4.1.2. Verify that material approval is complete prior to material being used on site.
 - 4.1.3. Verify that materials delivered on site meet contract requirements, FTA Buy America and are in compliance with approval documentation
 - 4.1.4. Coordinate Materials Testing and Inspection. Monitor the sampling and testing to determine compliance of those materials with construction contract requirements. In those instances where unsatisfactory test results are obtained, follow through with notification to the construction contractor and retesting of the materials after corrections are made.
 - 4.1.5. Collect scaleman's daily reports and scale certifications.
 - 4.1.6. Progress Payment Verification.
 - 4.1.7. Verify acceptance sampling and testing frequencies reflect the actual quantities used.
 - 4.1.8. Photographs. Take construction photographs and progress photographs of construction activities, on a daily basis, to document progress of the work and job site conditions encountered. Particular attention will be given to any work performed below the finished grade.
- 4.2. Make recommendations to the Agency concerning operational acceptance, substantial completion, and acceptance of the work. Include review of the requests for extension of time by the Construction Contractor.
- 4.3. Record drawings. Review the Construction Contractor's Record Drawings on a bi-weekly basis (and upon completion of major tasks) to verify posted changes. Verification includes scrutinizing that all information is being provided for Consultant to responsibly draft the record drawings.

Record drawings based on contractor provided mark-ups, are to be printed on full size archival quality paper.

5. Construction Design Support and Special Inspections

5.1. Construction Design Support (limited to minor changes).

- 5.1.1. Assist the Agency Project Manager with requests where field construction modifications or additions are requested and provide design technical assistance to field personnel.
- 5.1.2. Visit site when needed to evaluate design issues
- 5.1.3. Review shop drawings for general conformance to the contract documents.
- 5.1.4. The Consultant will provide written responses in PDF format for RFIs.

5.2. Special Inspections.

- 5.2.1. Quality Assurance Special Inspections when requested for architectural, structural, mechanical, illumination, and electrical work elements.

6. Earthwork Observation and Material Testing

Consultant will provide quality assurance testing as requested to ensure that the quality of materials and associated work is compliant with the contract documents.

TIME FOR COMPLETION

All work under this contract shall be completed by December 31, 2022. The scope of this contract is based upon the Contractor completing all construction activity within the time frame specified in the Contract Documents and is based upon a 260 working day schedule of construction observation, construction administration, and support personnel as outlined in the budget. In support of this schedule, our contract provides 260 working days of resident representatives and support staff, limited to the hours identified in the budget. If the work schedule changes due to the contractor working weekends, extended hours, work performed during suspension, added working days due to change orders or weather delays, or if the construction activity extends beyond the contract time, the Consultant shall inform the Agency immediately to allow the Agency an opportunity to authorize additional budget for the Consultant to provide the additional services as needed. The additional services will be billed at the hourly rates established in the base agreement.

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.

Proposals must be submitted via email to patrickr@kitsaptransit.com. The email should have **Kitsap Transit Project KT 21-708 CM Silverdale Transit Center Project** in the subject line. Upon timely receipt, Kitsap Transit will acknowledge receipt of your Proposal.

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:

Mr. Patrick Rogers, Purchasing Coordinator
Kitsap Transit
60 Washington Ave. Suite 200
Bremerton, WA 98337

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 with in the provided Sample Agreement. If the Proposer takes not exceptions, this must be stated as well. Failure to state exceptions relieves Kitsap Transit of any obligation to negotiate terms and conditions.

2. Understanding and Approach:

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 Proposal should include specific information addressing:

- The ability to administer an efficient and economical construction management process
- Processes for controlling claims and schedule management
- Ability to deliver timely responses to services

3. 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.

4. Past Experience

Proposer shall provide three (3) references for similar projects that the team has completed in the past five (5) years. 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.

5. 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.

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.

5.0 Evaluation Criteria

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

1. Past Experience	300
2. Understanding and Approach	300
3. Technical Capacity	250
4. Key Personnel	150
Total	1000

5.1 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.

5.2 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 (required form)

Exhibit B: Federal Transit Administration Contract Clauses and Contractors Certification of Acknowledgment (required form)

Exhibit C: Federal Certification Regarding Lobbying (required forms)

Attachment A: Protest and Appeal Policy

Attachment B: Sample Contract

Attachment C: DBE Bidder's List (optional form)

END OF SECTION 9

EXHIBIT A

BIDDERS AFFIDAVIT PROJECT KITSAP TRANSIT 21-708

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

****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, 2020
www.fta.dot.gov/documents/26-Master.pdf

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

**** This form must be return with your Proposal****

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 (24), 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 (24), 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.

EXHIBIT C

LOBBYING CERTIFICATION KITSAP TRANSIT 21-708

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.

Protests to the Federal Transit Administration

When the award is funded in part by Federal Transit Administration (FTA) funds, the vendor or service provider may appeal to the FTA pursuant to FTA Regulations. Protests made to the FTA will be limited to Kitsap Transit's (1) failure to have followed its protest procedures, (2) failure to review a complaint or protest, or (3) violations of Federal law or regulation. Any protest to the FTA must be made in accordance with the following guidelines:

1. A protest must be filed with the FTA no later than five business days after the Protesting Vendor exhausts Kitsap Transits protest and appeal procedures.
2. A protest to FTA must be filed in accordance with FTA Circular 4220.1F, as amended.

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 an 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

By: (SAMPLE AGREEMENT)
John W. Clauson

By: (SAMPLE AGREEMENT)

Its: Executive Director

Its: Principal.

Address: 60 Washington Ave., Ste. 200 Address: _____
Bremerton, WA 98337 _____, WA _____

Date: _____

Date: _____

ATTACHMENT C

DBE BIDDERS LIST – DBE AND SBE PROJECT KITSAP TRANSIT #21-708

Federal Transit Administration (FTA)

As required by 49 CFR Part 26.11, Kitsap Transit is required to create and maintain a Bidders List of all firms Bidding on prime Contracts and Bidding or quoting subcontracts on U.S. Department of Transportation-assisted Contracts. To comply with this provision of the regulations, Kitsap Transit requests the following information required by the FTA.

This information is not used in determining Award of Contract or in evaluating your Bid or Proposal in any way. Providing this information is voluntary.

Company Name: _____

Company Address: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

Authorized Signature: _____

Printed Name and Title: _____

Date Signed: _____

Is your firm a Disadvantaged Business Enterprise (DBE) registered with the State of Washington Office of Minority and Women's Business Enterprises?

☐ Yes

☐ No

Is your firm a Small Business Enterprise (SBE) meeting the size requirements of 49 CFR Part 26.65 whereby average annual gross receipts for the previous three years do not exceed \$22.41 million (or as adjusted for inflation by the Secretary of USDOT)?

☐ Yes

☐ No

How long has your firm been in business? _____

Please check the box that describes your total (national) gross annual receipts:

☐ Less than \$500,000

☐ \$500,000 - \$1,000,000

☐ \$1,000,001 - \$1,500,000

☐ \$1,500,001 - \$2,000,000

☐ \$2,000,001 - \$2,500,000

☐ \$2,500,001 - \$3,000,000

☐ \$3,000,001 - \$3,500,000

☐ \$3,500,001 - \$4,000,000

☐ \$4,000,001 - \$4,500,000

☐ \$4,500,001 - \$5,000,000

☐ \$5,000,001 - \$5,500,000

☐ Greater than \$5,500,000

Please return this form to Kitsap Transit's Contracts Administrator, 60 Washington Ave., Ste. 200, Bremerton, WA 98337 or include it with your Bid or Proposal.

Thank you very much!

****Optional Use Form****