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## **REQUEST FOR QUALIFICATIONS**

### **KINGSTON DOCK PROTECTION PLAN**

**RFQ KT # 21-742**

**November 16, 2021**

**Proposals are due November 30, 2021; 2:00 P.M.**

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

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

## Section 1: Announcement

### Request for Qualifications

#### KT # 21-742 Kingston Dock Protection Plan

**Purpose of Procurement:** Kitsap Transit is requesting Proposals from qualified firms or teams to review the current conditions at Kitsap Transit's Kingston Dock and develop a plan that will protect Kitsap Transit assets from high wind, extreme weather, vessel wake, tide changes, and other environmental conditions.

**Bidding Documents:** Proposal documents can be requested from Patrick Rogers at [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com).

**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 November 22, 2021** to: [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com).

**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; a period of sixty (60) Calendar Days.

**Proposal Due Date:** Proposals will be received at **via email at**, [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com) until **2:00 PM on November 30, 2021**. When the official clock reads 2:00:01 PM, Proposals are considered late and will not be considered for award.

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

Activity	Date and Time
Request for Qualifications Released	November 16, 2021
Pre-Bid Meeting & Site Visit	Not offered
Request for Clarification/Substitutions Due	5:00 PM November 22, 2021
Proposal Due Date	<b>2:00 PM November 30, 2021</b>
Anticipated Notice to Proceed	*December 13, 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.

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

### **2.1 Introduction:**

Kitsap Transit intends to enter into a contract with the successful proposer to provide the scope of work outlined in Section 3.

Interested parties are encouraged to submit a Proposal in accordance with the requirements set forth in this **RFQ NO LATER THAN 2:00 p.m., November 30, 2021**. When the official clock reads 2:00:01 PM, submissions are considered late and will not be considered.

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

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

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

Kitsap Transit reserves the right to accept or reject any and all submitted proposals, portions or parts thereof; to waive informalities and minor irregularities in proposals; to decline award based on available funding for the Contract.

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 and project schedule, consultant qualifications and experience, evaluation criteria, contract terms and federal clauses.

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

## **2.2 Definitions:**

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

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

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

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

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

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

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

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

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

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

**Work Order/Task Order/Purchase Order:** a written document outlining the scope of services to be provided, the cost of those services, and the date of completion of the services; signed by an authorized representative of Kitsap Transit and the Contractor

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

The most “highly qualified” Contractor will be asked to provide a rate sheet outlining the rates to be charged to Kitsap Transit for each of the disciplines outlined in this RFQ.

## **2.4 Proposal Due Date:**

Proposals must be must be emailed to: [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com) NO LATER THAN **2:00 P.M.** on **November 30, 2021**. Late proposals will be rejected. Faxed proposals will NOT be accepted.

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 **November 22, 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 before submitting their 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](mailto:patrickr@kitsaptransit.com) by **November 22, 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 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/executedtitlevijune2011.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 based on rates and level of effort agreed upon during Contract Negotiations.

**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      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**

Kitsap Transit intends to enter into a contract with the successful proposer to develop a plan of action to protect Kitsap Transit's Passenger Only Ferry vessels moored at their Kingston facility.

#### **Project Background**

Kitsap Transit operates a Passenger Only Ferry service between the Port of Kingston and Seattle. Currently, when these vessels are not in operation, they are moored at Kitsap Transit's Kingston Dock. This current facility is unprotected from many environmental elements that put Kitsap Transit assets at risk.

Contractors will be asked to review the current conditions at the Kingston facility and determine the best way to protect Kitsap Transit assets from regular and extreme weather, changing tides, vessel wake, and other environmental conditions.

#### **Tasks & Deliverables**

##### **1. Identify Alternative Solutions for Analysis**

The Contractor will review all existing data and gather information from Kitsap Transit stakeholders to determine the extent of the existing problems. Drawing from existing solutions and incorporating new technology, the Consultant will develop a list of possible solutions. Each solution must be practical and implementable. During the initial development of solutions, all reasonable solutions should be considered.

**Deliverable:** Potential solutions including description of the proposed solution.

##### **2. Initial Solution Evaluation Criteria**

The Contractor will develop key initial solution evaluation criteria to be used to rate and rank up to three solutions for further analysis. The Contractor will be responsible for proposing evaluation criteria for Kitsap Transit's consideration. These criteria will be used to identify the three solutions that will be carried forward for further analysis. Solution criteria must include at a minimum; Engineer's Opinion of Cost, Feasibility of Implementation, Environmental Concerns, and any implementation concerns.

**Deliverable:** Initial solution evaluation criteria

##### **3. Solution Evaluation Matrix**

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

**Deliverable:** Draft and final solution Evaluation Matrix (to be completed in later tasks)

##### **4. Identify Solutions for Further Analysis**

Conduct the preliminary analysis required to rate identified solutions and select the solutions for further analysis. Items such as cost, practicality, ease of implementation, speed of implementation should be analyzed prior to moving solutions forward for full solution analysis.

**Deliverable:** Memo discussing the preliminary analysis and recommended solution/s for further analysis

## 5. **Solution Analysis**

The Contractor will conduct additional analysis on the solution/s selected for further analysis. In addition to the analysis required to complete the solution evaluation matrix the Contractor will prepare:

- Detailed Cost Estimate
- Project Timeline identifying major project milestones
- List of Permits, Studies, Agreement, MOU's, and other permissions needed to move solution to implementation
- High level solution conceptual layouts

## 6. **Solution Evaluation Report**

The Contractor will prepare a report documenting the work conducted to identify and evaluate the Kingston Dock Protection Plan. The report will include a summary of findings and a discussion of the preferred solution/s. The final report must include the following:

- The process employed to identify all reasonable alternatives and how each solution was objectively evaluated
- A discussion of alternative solutions that were eliminated from consideration from the detailed analysis and the reason the solution was removed from consideration
- Provide a complete and detailed discussion of each solution considered for further analysis including the relative ranking and preferred solution/s so that reviewers may evaluate their comparative merits
- Identify the preferred solution or solutions, if more than one exists, in a final report that may be presented to the Board of Commissioners and/or the public

**Deliverable:** Final report

## 7. **Public Outreach and Board Presentation (optional work)**

At Kitsap Transit's sole discretion, the Contractor may be asked to present the findings of this project to the Kitsap Transit Board of Commissioners at one of their regularly scheduled meetings. The Contractor may also be asked to participate in various public outreach meetings. If Kitsap Transit decides to award this optional work, the cost will be addressed in a Contract Amendment.

**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 PDF or WORD format. Zipped files, password protected, cloud based, and other file formats will not be accepted. 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](mailto:patrickr@kitsaptransit.com). The email should have **Kitsap Transit Project KT 21-742 Kingston Dock Protection Plan** 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

### **2. Firm Profile: (four page maximum)**

The Proposal shall provide a description of the firm including; the number of professional personnel employed in each discipline, services offered, areas of particular expertise, years in business, office location, and a brief description of the firms' experience.

**3. Past Experience (3-5 projects each project should be no more than two pages):**

Provide a description of 3-5 projects of a similar scope or complexity, including photographs and a text description of the firm's specific role in the project (e.g., workshop role, design, construction documentation, and contract administration). Kitsap Transit prefers projects that are related to marine shoreline protection and harbor improvements.

For each project, provide the name of the customer, a point of contact that can speak to the work accomplished by your firm during the project, contact information for the point of contact including name, phone number and email address. Identify key personnel who participated in each project and describe their roles.

Consultant may only provide one (1) project completed with Kitsap Transit is their past projects.

**4. Key Personnel (one page each, no restriction on the number of personnel that may be listed):**

Provide a resume or other similar document that summarizes the description of all of the proposed key personnel who will be involved in this project, their roles and responsibilities, and their experience in similar past projects.

**5. Forms:**

- Exhibit A: Bidder's Affidavit
- Exhibit D: Acknowledgement of Addenda

**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 described in this RFQ. 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.

<b>1. Firm Description</b>	<b>200</b>
<b>2. Past Experience</b>	<b>400</b>
<b>3. Key Personnel</b>	<b>400</b>
<b>Total</b>	<b>1000</b>

### **5.1 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.

### **5.2 Rejection of Proposals**

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

**END OF SECTION 5**

## **Exhibits and Attachments**

**Exhibit A:** Bidder's Affidavit

**Exhibit B:** [not used]

**Exhibit C:** [not used]

**Exhibit D:** Addenda Acknowledgement Form

**Attachment A:** Protest and Appeal Policy

**Attachment B:** Sample Contract

**END OF SECTION 9**

## EXHIBIT A

### BIDDERS AFFIDAVIT PROJECT KITSAP TRANSIT 21-742

#### **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, KT 21-742

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

**DEBARMENT AND SUSPENSION**

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Date

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

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**EXHIBIT B**

**Not Used**

**EXHIBIT C**

**Not Used**

EXHIBIT D

**KITSAP TRANSIT  
RFQ KITSAP TRANSIT # 21-742**

**Proposal Addenda Acknowledgement**

Receipt of Addenda number \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, is hereby acknowledged.

Proposer Company Name: \_\_\_\_\_

By: \_\_\_\_\_

Company Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone Number: (\_\_\_\_) \_\_\_\_\_

## 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

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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 A 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 A 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 INSURANCE PROVISIONS**

CONSULTANT shall obtain and keep in force during the full term of this Agreement the following insurance coverage's:

- 5.1.** Worker's Compensation Insurance in compliance with the laws of the State of Washington covering all CONSULTANT's employees who perform under this Agreement.
- 5.2** 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.
- 5.3** 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. Coverage in the minimum amount set forth herein shall not be construed to relieve CONSULTANT from liability in excess of such coverage. TRANSIT shall be specifically included as an additional insured in the insurance coverage required by this section. Notwithstanding, TRANSIT reserves all claims or rights of action against CONSULTANT as if TRANSIT were not named in the subject policy or policies.
- 5.4** 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.

## **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  
Bremerton, WA 98337

Address: \_\_\_\_\_  
\_\_\_\_\_, WA \_\_\_\_\_

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

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