



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

## **REQUEST FOR PROPOSALS**

## **SUPPLY DC FAST CHARGERS**

**RFP KT 20-675**

**June 16, 2020**

**Proposals are due July 10<sup>th</sup>, 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 Proposals**

#### **KT # 20-675 Supply DC Fast Chargers**

**Scope of Work:** Kitsap Transit (KT) is soliciting proposals from qualified vendors is to procure plug-in DC Fast Chargers (DCFCs) to charge six (6) electric buses at Kitsap Transit's Charleston Base, located in Bremerton, WA. The buses are purchased under a separate contract. The installation of these chargers will be completed under a separate contract.

It is intended that chargers be able to charge two buses either consecutively or simultaneously from the charge infrastructure without having to unplug one bus in order charge the second bus. Networking the chargers and buses is required. Charger design should be capable of charging two buses with a single charger or two paired chargers capable of charging two buses, depending on manufacturer charger design.

Should Kitsap Transit elect to use the selected charger for future installations, Kitsap Transit shall reserve the right to extend the resulting Contract for four (4) additional one (1) year periods. Based on the *Kitsap Transit Bus Electrification Study* completed in February 2020, up to 14 new buses are planned at Charleston Base by 2024 with an average of three electric buses purchased per year. Chargers may also be installed at other Kitsap Transit locations as demand dictates.

**Bidding Documents:** Plans, specifications and addenda for this project are available by contacting Patrick Rogers at [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com) .

**Pre-Proposal Meeting:** A Pre-Proposal meeting is not being offered for this project.

**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 June 29, 2019** at: Kitsap Transit, Attn: Patrick Rogers, 60 Washington Ave., Ste. 200, Bremerton, WA 98337; or e-mail: [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com).

**Time for Completion:** The Contractor, as part of their Proposal, shall provide Kitsap Transit with an estimated delivery. The delivery date will be calculated as days ARO to physical delivery of chargers to Kitsap Transit.

**Proposal Due Date:** Proposals shall be emailed to: [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com) . All Proposals must be received before **2:00 PM July 10, 2020**. Late Proposals will not be considered. Proposers will receive a confirmation of receipt when Proposal is received.

**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.

**END OF SECTION 1**

## Section 2: Instructions to Proposers

**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.

**ARO:** After Receipt of Order/Purchase Order

**Bid/Proposal:** The offer of a Bidder on a properly completed Bid Form to perform the Contract.

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

**Bid Documents:** means the solicitation (IFB) in its entirety, including the Plans provided under separate cover

**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, supplemental agreements, change orders, and all Contractor.

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

**RFP:** is an abbreviation meaning Request for Proposals.

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

**Successful Bidder/Proposer:** means the lowest responsive and responsible Bidder to whom Award of the Contract shall be made

**Surety:** A company that is bound with the Contractor to ensure performance of the Contract, payment of all obligations pertaining to the Work, and fulfillment of such other conditions as are specified in the Contract as required by law.

**Work:** The provisions of all labor, materials, tolls, equipment and everything needed to successfully complete a project according to the Contract.

This RFP provides details of what is required when submitting a Proposal for the Work, how KT will evaluate the Proposals, and what will be required of the Contractor in performing the Work. This RFP also gives the estimated dates in Section 2, for the various events in the submission process. While these dates are subject to change, prospective Contractors must be prepared to meet them as they currently stand.

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

### **2.1 Proposal Due Date**

Emailed Proposals must be received **NO LATER THAN 2:00 P.M. local time, on July 10, 2020.** Responses shall be emailed to [patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com). The Subject line of the email must read: **RFP KT #20-675 Supply DC Fast Chargers.** Late proposals will not be considered.

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

Proposers who seek to obtain information, clarification, or interpretations from contacts other than the KT Purchasing Coordinator are advised that such material is used at the Proposer's own risk. KT 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 RFP verbally. All questions must be submitted in writing, via USPS or 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 **June 29, 2020** to be considered in an Addendum. Written inquiries shall be directed to KT via USPS or email:

Kitsap Transit  
Attn: Patrick Rogers  
60 Washington Ave., Ste. 200  
Bremerton, WA 98337-1888  
[patrickr@kitsaptransit.com](mailto:patrickr@kitsaptransit.com)

### **2.3 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 or facsimile notification of issued Addenda. Proposers that do not register will not be notified of Addenda and will need to periodically check for Addenda on KT’s website at: <http://www.kitsaptransit.com/agencyinformation/procurement> during the Proposal period and before submitting your Proposal.

All submitted proposals and attachments become the property of KT and shall remain in effect for at least ninety (90) days after Proposal Due Date. The accepted Proposal shall remain in effect until the Contract is fully executed and will then become a part of the Contract, including any addenda and all attachments.

### **2.4 Reserved**

### **2.5 Payment**

Kitsap Transit is a public agency. KT cannot pay for services that have not been received. Therefore, we cannot provide a deposit or advance payment.

At the execution of the contract KT will issue a contract for the full value of the project. Payments will be made against that total upon successful completion and acceptance of the total or a portion of the work and receipt of an invoice from the Contractor.

All payments to Contractor shall be remitted by US mail.

Invoices shall be mailed to:

Kitsap Transit,  
Attn: Accounts Payable  
60 Washington Ave, Suite 200  
Bremerton WA 98337

No payment, whether monthly or final, to the Contractor for any services shall constitute a waiver or release by KT of any claims, rights, or remedies it may have against the Contractor under this Contract or by law, nor shall such payment constitute a waiver, remission, or discharge by KT of any failure or fault of the Contractor to satisfactorily perform the services as required under this Contract.

### **2.6 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 2019 is 2.93%, the full text of which may be found at <http://www.kitsaptransit.com/agency-information/procurement>.

## 2.7 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/executedtitleviune2011.pdf> for the full text of the above Civil Rights statements.

## 2.8 Anticipated Calendar of Events

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 Proposals Released	June 16, 2020
Request for Clarification/Substitutions Due	5:00 PM June 29, 2020
Proposals Due Date	<b>2:00 PM July 10, 2020</b>
Evaluations Complete	*July 21, 2020
Board of Commissioners Award	*August 4, 2020

## 2.9 General Information for Proposers

KT 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 responsive and responsible Proposer, whichever is in the best interest of KT.

In consideration for KT’s review and evaluation of its proposal, the Proposer waives and releases any claims against KT 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 KT determines that collusion has occurred among Proposers, none of the proposals of the participants in such collusion will be considered. KT’s determination shall be final.

KT 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.

## **2.10 Cancellation or Extension**

KT 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 KT executes the Contract, or until the protest or request for reconsideration is withdrawn by the Proposer.

## **2.11 Modifications**

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 KT *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.

## **2.12 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 KT the services described herein, or until one or more of the proposals have been approved by KT, whichever occurs first.

## **2.13 Award**

Kitsap Transit reserves the right to make award within ninety (90) calendar days from the Proposal Due Date. Should award, in whole or part, be delayed beyond the period of ninety (90) days, such award shall be conditioned upon Proposer's acceptance.

Submitted Proposals shall be conclusive evidence to KT that the Proposer has thoroughly examined and understands all requirements of the Proposal and the work to complete the Contract. The failure or neglect of a Proposer to receive or examine any proposal 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. KT will not be responsible for any costs incurred by Proposers in preparing, submitting, or presenting their response to this RFP.

All proposals and submissions become the property of KT and are subject to public disclosure, unless certain provisions as described in Section 6 pertain.

## **2.14 Kitsap Transit Protest and Appeals Policy**

## **A. Purpose**

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

## **B. Protest and Appeal Policy**

### **Who May Protest or Appeal**

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

### **Timing of Protest**

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

### **Basis of Protest**

Protests must be based on the following criteria:

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

### **Protest Form and Content**

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

### **Protest Procedure**

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

### **Appeal Procedure**

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

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

**Failure to Comply with Requirements**

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

**Exhausted Administrative Remedies**

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

**END OF SECTION 2**



### **Section 3: Proposal Contents and Evaluation**

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 via email either in a PDF or Microsoft Word format.

All proposals must be submitted as specified. To be considered, the proposal must respond to all parts of the RFP. 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.

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. KT will be the final authority in determining the responsiveness of a proposal. The RFP will be evaluated based on the criteria listed in the evaluation criteria.

#### **BID EVALUATION**

An evaluation committee of qualified Kitsap Transit staff and/or other persons selected by Kitsap Transit will conduct evaluations of proposals. The committee will evaluate all responsive proposals based upon the information and references contained in the proposals as submitted.

Kitsap Transit reserves the right, before awarding the contract, to require a Proposer to submit evidence of its qualifications, as Kitsap Transit deems necessary. In addition, Kitsap Transit may consider any evidence available of financial, technical and other qualifications and capabilities; including performance experience with past and present users.

Kitsap Transit reserves the right to request additional clarifying information and request an oral presentation from any and all Proposers prior to determination of award.

Kitsap Transit reserves the right to award the contract to that Proposer who will best serve the interest of Kitsap Transit. Kitsap Transit reserves the right based upon its deliberations and in its opinion, to accept or reject any or all proposals. Kitsap Transit also reserves the right to waive minor irregularities or variations to the specifications and in the bidding process.

The Proposer acknowledges that Kitsap Transit shall be the sole judge of the values used to calculate the Life Cycle Cost and other evaluation criteria of importance to the Kitsap Transit.

#### **THE METHOD OF EVALUATION SHALL INCLUDE**

EVSE System Cost – 55 points

DCFC Considerations – 45 points

The Proposer that obtains the highest point total will be used in consideration of determining which proposal is in the best interest of the Kitsap Transit.

**EVSE SYSTEM COST EVALUATION: (INFORMATION TO BE PROVIDED IN BID FORM TO BE RELEASED IN ADDENDUM #1)**

EVSE System Cost shall be completed as described below. In order to assist in this evaluation the Supplier shall complete the Summary Table included in Exhibit B.

Evaluation breakdown is as follows: In the evaluation of responsive Bids, the Bidder that provides the lowest cost for each line item will receive the total point value for that item. Other supplier's point values shall be normalized using the Lowest Bidder for that line item divided by the line item cost of the Bidder under consideration and multiplied by the point total for that line item. Line items include:

**Capital Cost.**

- a. This line item includes the purchase cost of all chargers, dispensers, network license, and ancillary equipment required to charge 6 electric buses.
- b. The Capital Cost provided in the bid tab will be utilized within the Contract as the equipment procurement cost.
- c. Capital Cost is worth 20 maximum points.
- d. Proposers will provide pricing for chargers to be purchased in 2021, 2022, 2023 and 2024 at Kitsap Transit's sole option. For bidding purposes, Proposers are to assume the purchase and integration of three (3) chargers per year. Kitsap Transit will not use the pricing in the evaluation of award but will ensure pricing is "fair and reasonable".

**Support Service.**

- a. This line item includes hourly support rates for the following services required under this contract. Hours are given provided for bidding purposes only.
  - I. Engineering Support (16 hours via email and phone)
  - II. Construction Support (18 hours via email and phone)
  - III. Field Testing Support (24 hours of on-site service)
- b. Field Testing Support will be listed as a lump sum for 24 hours of on-site services. The lump sum shall include all travel, time and other expenses.
- c. Service will be billed for actual hours worked. Hours presented are estimates.
- d. Support Service is worth 10 maximum points.

**Average Annual Operations and Maintenance Cost.**

- a. This line item includes the annual anticipated operations and maintenance costs associated with the equipment needed to charge 6 buses.
- b. Operations. Supplier to include maximum power draw while idle or in standby for a single charger. Owner shall determine annual operating cost based on 8,760 hours per year to determine kilowatt hours (kwh) of idle operation. The annual kwh will then be multiplied by the electrical rate (\$0.05901/kwh) to determine the annual operating cost.
- c. Maintenance. Supplier to provide average annual maintenance cost for the charge supply equipment. For those items that are not replaced annually but may be replaced during the 20 year period, that annual replacement cost shall be determined by dividing the replacement cost by the replacement period (i.e. \$10,000 charge block replaced every 5 years has an average annual maintenance cost of \$2,000 per year).

- I. Maintenance line item costs should include installation as well as equipment purchase.
- II. Provide annual maintenance costs for the following charge components:
  - i. Network and software license
  - ii. Remote system monitoring and support
  - iii. Power module/block replacement
  - iv. Miscellaneous items not included but required by supplier
- d. Annual operations and maintenance is worth 10 maximum points.

**20-year Present Worth Cost will be calculated by the Owner.**

- a. Annual cost will be normalized to present value using a 3% annual cost escalation rate over a 20 year period.
- b. Capital and support services costs will be added to the normalized present value to determine the 20-year Present Worth Cost.
- c. 20-year Present Worth is worth 15 maximum points.

**DC FAST CHARGER CONSIDERATIONS EVALUATION**

**Equipment Technical Specification.**

Each Bidder shall provide responses to Table B in Specification Section Exhibit B. In the evaluation of responsive Bids, the Bidder will be judged by the Buyer to determine the ability to meet the specification. Bidders will be assigned 0-20 points based upon the judged level of performance.

**Charger Uptime.**

Each Bidder shall provide a listing of up to 100 US charger installations of the same type being proposed, the startup date, the charger communication uptime, the overall charger uptime, and with plant operator contact name and phone number (multiple chargers per site are acceptable). If greater than 100 chargers are installed at a single facility, provide information for at least three (3) facilities.

- Chosen facilities or installations shall have been in operation post-commissioning for a minimum of 2-years. Demonstrated facilities with longer durations will be judged favorably.
- Demonstrated facilities with same charger model numbers will be judged favorably.
- In the evaluation of responsive Bids, the Bidder will be judged by the Buyer to determine the level of proven performance with respect to charger communication uptime, overall charger uptime, dedication to the installation, and service support. Bidders will be assigned 0-20 points based upon the judged level of performance.

**Operational History.**

Each Bidder shall identify its first installed charger using the same model as proposed along with the date of startup and facility operator contact name / phone number.

- With a maximum of 5 points for this evaluation item, Bidders that have less than one (1) year operating history on the proposed model shall receive 0 points, bidders that have one (1) to five (5) years of operating experience on the proposed model shall receive 1 to 4 points, and those that have operation history on the proposed model longer than five (5) years shall receive 5 points.

**END OF SECTION 3**

#### **Section 4: Proposal as Public Records**

By submitting a proposal, the Proposer has thereby agreed to the provision of this Section. Except to the extent permitted by Washington State public disclosure laws RCW Chapter 42.56, KT 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 KT *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. KT 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", KT 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, KT 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 KT harmless for any cost, penalties, and/or fees (including reasonable attorney fees) incurred in any action regarding the disclosure of said information. KT assumes no responsibility or liability for any losses or damages which may result from the information contained in the proposal.

By submitting a proposal, the Proposer has thereby agreed to the provision of this Section.

**END OF SECTION 4**

**KITSAP TRANSIT**  
**REQUEST FOR PROPOSALS # KT 20-675**  
**FOR**  
**SUPPLY DC FAST CHARGERS**

**EXHIBIT A**

**Bidder's Affidavit**

# EXHIBIT A

## BIDDERS AFFIDAVIT

### BIDDER'S AFFIDAVIT PROJECT KT #20-675

#### NON-COLLUSION

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

#### CONFLICTS OF INTEREST & ANTI-KICKBACKS

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

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

#### CONTINGENT FEES AND GRATUITIES

The Bidder affirms that in connection with this Bid:

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

determination with respect to the performance of this Contract.

### **SEGREGATED FACILITIES**

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

### **DEBARMENT AND SUSPENSION**

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

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

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

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



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

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

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

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

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

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

---

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Notary Public in and for the State of \_\_\_\_\_,

residing in \_\_\_\_\_

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

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

**KITSAP TRANSIT**

**REQUEST FOR PROPOSALS # KT 20-675**

**FOR**

**SUPPLY DC FAST CHARGERS**

**EXHIBIT B**

**DC Fast Charger Specifications**

**EXHIBIT B**  
**DC FAST CHARGERS (DCFC) SPECIFICATIONS**

**PART 1 - GENERAL**

**1.1 SUMMARY**

- A. Section Includes:
  - 1. DC Fast Chargers
  - 2. Dispenser Heads.
- B. Related Specification Sections include but are not necessarily limited to:
  - 1. RFP KT 20-675 Procurement and Contracting Documents.
  - 2. General Requirements.

**1.2 QUALITY ASSURANCE**

- A. Referenced Standards:
  - 1. American National Standards Institute (ANSI).
  - 2. National Electrical Manufacturers Association (NEMA).
  - 3. Society of Automotive Engineers (SAE):
    - a. SAE J1772, Electric Vehicle Conductive Charge Coupler standard
    - b. SAE J2293, Requirements for EV and the off-board EVSE used to transfer electrical energy to an EV from a utility source
    - c. SAE J2847, Digital communication requirements
    - d. SAE J2836, Digital communications between vehicle and EVSE
    - e. SAE J2894, On-board charger power quality
    - f. SAE J551, Standards for electromagnetic compatibility
  - 4. National Fire Protection Association (NFPA):
    - a. 70, National Electrical Code (NEC).
      - 1) Article 625 Electric Vehicle Charging
  - 5. Underwriters Laboratories, Inc. (UL).
    - a. UL 2202, Electric Vehicle Charging System Equipment
    - b. UL 2231-1, Personnel Protection Systems for Electric Vehicle (EV) Supply Circuits: General Requirements
    - c. UL 2231-2, Personnel Protection Systems for Electric Vehicle (EV) Supply Circuits: Particular Requirements for Protection Devices for Use in Charging Systems
    - d. UL 2251 – Plugs, Receptacles, and Couplers for Electric Vehicles

**1.3 DEFINITIONS**

- A. Buyer: Kitsap Transit and its designated representatives. Also referred to as Owner.
- B. Engineer: HDR Engineering.
- C. Supplier: Entity responsible for providing DC Fast Charger Equipment detailed in this specification.
- D. Electric Vehicle Supply Equipment (EVSE): Synonymous with charger or DC Fast Charger. EVSE includes all components required to install a charger and supply charging current to an electric bus, including but not limited to: charger, charge cords, connector, dispenser, network, power blocks, internal wiring, hardware to securely mount the charger, and ancillary equipment required for functional charger. EVSE does not include concrete pedestal, utility power transformer, or the cable, conduit, and electrical system leading to the EVSE.
- E. Contractor: Entity responsible for installing the DC Fast Charger Equipment provided by Supplier.

## **1.4 SUBMITTALS**

- A. Due at the time of response to pre-procurement:
  - 1. RFP KT 20-675 Section 4 Proposal Content
- B. Due from selected charger provider
  - 1. Shop Drawings:
    - a. Product technical data:
      - 1) Provide submittal data for all products including subcomponents specified in PART 2 of this Specification Section:
        - a) Charger
        - b) Dispenser
        - c) Network
        - d) Ancillary Equipment
      - 2) If selected, provide Drawings in AutoCad format for incorporation in to design.
  - 2. Fabrication and/or layout Drawings.
    - a. Outline Drawing including dimensions, weight and identification of all components and features.
    - b. Required wiring diagrams for chargers, dispensers, and ancillary equipment.
      - 1) Include minimum and maximum wire and conduit sizes
      - 2) Input ampacity, voltage, and load
      - 3) Output ampacity, voltage, and load
  - 3. Certifications:
    - a. As required in PART 2 of this Specification Section.
- C. Contract Closeout Information:
  - 1. Operation and Maintenance Data:
    - a. Content of Operation and Maintenance Manual:
      - 1) Instruction and maintenance manual.
      - 2) Product technical data provided in the submittal.
      - 3) One-line drawing updated for as-built conditions.
      - 4) Factory test report.
      - 5) Field test report.
- D. Informational Submittals:
  - 1. Factory test report.
  - 2. Uptime report

## **1.5 DELIVERY, STORAGE, AND HANDLING**

- A. Supplier to deliver charging equipment required to charge 6 buses to Owner's facility in Bremerton, WA no later than December 31, 2020.
  - 1. Delivery schedule to be provided upon Notice to Proceed.
- B. Supplier to offload equipment for storage at Owner's facility.
- C. Supplier to provide adequate packaging to deliver and store equipment without damage.
- D. Equipment handling to be the responsibility of the Owner after receipt of offloaded equipment.

## **PART 2 - PRODUCTS**

### **2.1 MANUFACTURERS**

- A. Subject to compliance with the Contract Documents, the following manufacturers are acceptable:
  - 1. ABB.
  - 2. ChargePoint.
  - 3. Tritium
  - 4. Efacec

5. Siemens
6. Or approved equal that support existing bus manufacturers utilized at the site
  - a. Gillig.
  - b. Proterra.
  - c. Bus manufacturers utilizing SAE J1772 charger couplers.

## 2.2 DC FAST CHARGER

### A. General:

1. Charger to be capable of two single buses charging in sequence, or dual bus charging simultaneously. One bus must also be capable of charging if only a single bus is connected.
  - a. Capable of charging both buses simultaneously at partial, or
  - b. Single bus at full charging power unit capability for each dispenser for single or sequential charging.
2. Charger may be single or multiple pieces of equipment depending on manufacturer.
  - a. Charge dispenser may be integral or separate from the power unit.
  - b. Multiple power units may be paired together to supply the specified minimum charge.
3. Charger will be located in a secure location accessible only by bus personnel. Payment options are not required and charging shall begin according to charge status as soon as charger is connected to bus.
  - a. Local electric utility does not currently alter demand charging rates based on time of day. However, charger to be capable of programming delayed charging based on time of day, if future rate structure changes.
4. Equipment purchased shall meet the Buy America requirements for 2020.

### B. Ratings and Configurations:

1. Type: Outdoor, pedestal-mounted.
2. Number of phases: Three.
3. Frequency: 60 Hz.
4. Input voltage: 480 V AC
5. Output Power at all output voltages:
  - a. Minimum: 125 kW
  - b. Maximum: 200 kW
6. Maximum power draw while idle or in standby: 10W
7. Output Voltage Charging: Variable depending on charging load/speed
  - a. Maximum: 750 V DC
  - b. Minimum: 450V DC
8. Operating Temperature: -20°F to 122°F
9. Operating Humidity: Up to 95% at 122°F
10. NEMA 3R enclosure
11. Overcurrent protection internal to the charger
12. Charge Circuit Interrupting Device (CCID) or Ground Fault Circuit Interrupter (GFCI) integral to the charger
13. After loss of power, the chargers shall return to post-configuration state.
  - a. If a bus is connected to the charger at loss of power, the charge shall be completed immediately upon return of power.
14. Charger shall have reset option which returns the device to its pre-configuration state

### C. Dispenser:

1. May be integral to power unit or separate.
2. NEMA 3R enclosure
3. Connectors: SAE CCS1
4. Cable length/cord management: Minimum 14 FT retractable
5. Cable cooling: Not required.

### D. Network:

1. Chargers to have network capability for the following:
  - a. Cell service or Internet access for data exchange

- b. Network Administrator
    - c. Manufacturer or Network Service Center
  - 2. Transaction and bank network ability is not required.
  - 3. Communication Protocol: Open Charge Point Protocol (OCPP) 1.5 or greater
  - 4. Cross vendor compatible
  - 5. Capable of data reporting.
  - 6. Common signals shall meet OpenADR2.0b
    - a. RSA
    - b. ECC
    - c. TCLS
    - d. Virtual End Node (VEN)
      - 1) VEN shall acknowledge receipt of control signals
  - 7. System to support Network Time Protocol (NTP/UTC) time synchronization
  - 8. System to supply remote software upgrade function (i.e. firmware upgrade)
  - 9. System to supply explicit error messages for a range of device and communication failures (e.g. unrecognized message, out of range/low signal strength, low battery level, feature not supported, meter faults, EVSE faults).
  - 10. System shall acknowledge execution failure of request
- E. Ancillary equipment
- 1. All ancillary equipment integral to the charger shall be provided by the supplier. This shall include, but may not be limited to:
    - a. Power bank
    - b. Communication software
    - c. Step transformers, if required for voltage other than 480V, 3PH power
    - d. Charge dispenser
    - e. Cable management
    - f. Mounting brackets or diagrams
    - g. Fasteners for securing equipment to mounting location
  - 2. Ancillary equipment shall not include:
    - a. Concrete pad
    - b. Breakers
    - c. Conduit
    - d. Conductor
    - e. Utility supplied power

## **2.3 CHARGER UPTIME**

- A. Supplier to provide documentation about communication and charger uptime
  - 1. Most recent data to show overall uptime, not less than 1 year old
  - 2. Supplier to provide 99% communication uptime to chargers
  - 3. Supplier to provide 98% charger uptime

## **2.4 MAINTENANCE MATERIALS**

- A. Provide manufacturer recommended maintenance material to Owner.
- B. Supplier shall supply one set of product-specific tools for the project.

# **PART 3 - EXECUTION**

## **3.1 GENERAL**

- A. The following tasks include estimated hours for bid comparison purposes only. Contractor will be paid for actual hours worked at rate provided on Bid Form.

## **3.2 DESIGN**

- A. Following selection process, supplier shall provide pertinent data required to design and provide operable chargers at time of construction completion. Information shall include:

1. Datasheets
  2. Design dimensions, including clearances for maintenance and airflow
  3. Recommended concrete pad dimensions and rebar requirements.
  4. Recommended conduit placement within the pad
  5. Recommended conduit and conductor sizes
  6. Recommended breaker sizes
  7. Communication requirements
- B. Review Engineer's design documents prior to issuing to electrical contractor for installation to ensure that all items required by Supplier are met. One set of redline comments shall be provided to the Engineer to incorporate into the design drawings.
- C. Supplier shall plan for the following engineering support:
1. 16 hours of phone and email support to the engineer during design.

### **3.3 INSTALLATION**

- A. Supplier shall plan for the following construction support following contractor selection.
1. 2 hour kickoff meeting that the Supplier be present via conference call.
  2. 16 hours of phone and email support to the contractor during construction.

### **3.4 FIELD QUALITY CONTROL**

- A. At the completion of construction and prior to charger energization, Supplier shall provide field technician to review installation provided by the Contractor in the presence of the Engineer and Contractor.
- B. Following resolution of any items found during the pre-energization review, Contractor will energize the chargers and Supplier shall complete manufacturer recommended field testing.
- C. Following manufacturer recommended testing, Supplier shall provide final settings and testing for Owner's buses and charging system to provide a complete and functional product.
- D. Supplier shall plan for the following field service support:
1. 24 hours of field service, testing, and training
  2. Ancillary fees:
    - a. Mobilization and demobilization to the site
    - b. Lodging
    - c. Travel
    - d. Required testing equipment, etc.

## **PART 4 - CHECKLIST**

- A. In order to assist in evaluation, Supplier shall provide responses to the following checklists. Provide additional information on separate sheet if more room is required for each response.

**B. Standard Equipment Technical Requirements**

Ref #	Requirement	Response
1	Charger validated/approved with Proterra and Gillig	
2	Charger meets Buy America Act? Provide Buy America Audit.	
3	Charger model number	
4	Charger capable of dual and single bus charging	
5	Number of power units required to charge 2 buses	
6	Separate charge dispenser required? If yes, provide dispenser model number	
7	Input Voltage	
8	Output Power	
9	Output voltage range	
10	Power draw when not in use	
11	UL listed?	
12	NEMA 3R enclosure rating?	
13	Connector Type	
14	Charge cable length	
15	Cable Cooling Required?	
16	OCPP Version	
17	OpenADR 2.0b compatible?	
18	Provide list of all ancillary equipment required that is not listed above.	
19	Recommended conduit size	
20	Recommended conductor size	
21	Additional pertinent information	
22	Exceptions to the Specification	

**END OF SECTION**



**KITSAP TRANSIT**  
**INVITATION FOR BIDS # KT 20-675**  
**FOR**  
**Supply DC Fast Chargers**

**EXHIBIT C**

**FTA Contract Clauses and Certifications**

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

Source: FTA Master Agreement (25), October 1, 2018  
[fta-master-agreement-fy-2019](#)

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

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

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

\_\_\_\_\_  
Date

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

# FEDERAL TRANSIT ADMINISTRATION CONTRACT CLAUSES

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

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

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

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

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

1. Claim,
  2. Statement,
  3. Submission,
  4. Certification,
  5. Assurance, or
  6. Representation, and
- (b) That information is false, fictitious, or fraudulent.

## **ACCESS TO RECORDS**

The Recipient agrees that:

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

## **FEDERAL CHANGES**

Changes to Federal Requirements and Guidance:

- (1) Requirements and Guidance. New Federal Requirements and Guidance may:
  - (a) Become effective after the FTA Authorized Official signs the Recipient's Underlying Agreement awarding funds for the Project, and
  - (b) Apply to the Recipient or its Project.
- (2) Modifications. Federal requirements and guidance that apply to the Recipient or its Project when the FTA Authorized Official awards Federal funds for the Recipient's Underlying Agreement may:
  - (a) Be modified from time to time, and
  - (b) Apply to the Recipient or its Project.

- (3) Most Recent Provisions. The latest Federal requirements will apply to the Recipient or its Project, except as FTA determines otherwise in writing using a:
- (a) Special Condition in the Recipient’s Underlying Agreement,
  - (b) Special Requirement in the Recipient’s Underlying Agreement,
  - (c) Special Provision in the Recipient’s Underlying Agreement,
  - (d) Condition of Award in the Recipient’s Underlying Agreement,
  - (e) Letter to the Recipient signed by an authorized FTA official, or
  - (f) Change to FTA or Federal guidance.

## **CIVIL RIGHTS REQUIREMENTS**

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

- (1) Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA’s “Nondiscrimination” statute):
- (a) FTA’s “Nondiscrimination” statute prohibits discrimination on the basis of:
    - 1. Race,
    - 2. Color,
    - 3. Religion,
    - 4. National origin,
    - 5. Sex (including gender identity),
    - 6. Disability, or
    - 7. Age, and
  - (b) The FTA “Nondiscrimination” statute’s prohibition against discrimination includes:
    - 1. Exclusion from participation,
    - 2. Denial of program benefits, or
    - 3. Discrimination, including discrimination in employment or business opportunity.
- (2) Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will:
- (a) Prohibit discrimination based on:
    - 1. Race,
    - 2. Color, or
    - 3. National origin,
  - (b) Comply with:
    - 1. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*,
    - 2. U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 23, and
    - 3. Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document, and

- (a) Except as FTA determines otherwise in writing, follow:
  - 1. The most recent edition of FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance.
  - 2. U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and
  - 3. Other applicable Federal guidance that may be issued.

(3) Equal Employment Opportunity.

- (a) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:
  - 1. Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*,
  - 2. Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, “Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity,” July 21, 2014,
  - 3. Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document, and
  - 4. FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients,” and
  - 5. Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.

(b) Specifics. The Recipient agrees to:

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

- g. Upgrading,
- h. Transfers,
- i. Demotions,
- j. Layoffs, and
- k. Terminations.

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

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

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

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

- 1. Section 1101(b) of MAP-21, 23 U.S.C. § 101 note,
- 2. U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and
- 3. Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document.

(b) Assurance. As required by 49 C.F.R. § 26.13(a), the Recipient provides assurance that:

- 1. It shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract.
- 2. It shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

(5) Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including:

- (a) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*,
- (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance”, 49 C.F.R. part 25, and
- (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document.

(6) Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including:

- (a) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § § 621 – 634, which prohibits discrimination on the basis of age,
- (b) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA,
- (c) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § *et seq.*, which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds,

- (d) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, which implements the Age discrimination Act of 1975, and
  - (e) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document.
- (7) Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities:
- (a) Federal laws, including:
    1. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,
    2. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities,
    3. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities,
    4. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
    5. Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities.
  - (b) Federal regulations, including:
    1. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. 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 (25), 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 (25), 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.

## **BUY AMERICA**

Domestic preference procurement requirements of:

- (1) 49 U.S.C. § 5323(j), as amended by MAP-21 and FAST Act, and
- (2) FTA regulations, “Buy America Requirements,” 49 C.F.R. part 661, to the extent consistent with MAP-21 and FAST Act.

## **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.

## **CARGO PREFERENCE**

- (1) Use of United States-Flag Vessels. Shipping requirements of:
  - (a) 46 U.S.C. § 55305, and
  - (b) U.S. Maritime Administration regulations, “Cargo Preference - U.S.-Flag Vessels,” 46 C.F.R. part 381.

## **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.

## **SIMPLIFIED ACQUISITION THRESHOLD**

Contracts for more than the simplified acquisition threshold, currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.326. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

## Buy America Certification

### Certification Requirement for Procurement of Steel or Manufactured Products

This procurement is subject to Federal Transit Administration requirements in 49 CFR Part 661. A

*The Buy America Certificate, as shown below, must be completed and submitted with your Proposal.*

#### Certificate of Compliance with 49 U.S.C. 5323(j) (1)

The Proposer hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j) (1) and the applicable regulations in 49 CFR Part 661.5. The product will be manufactured in the United States with all components being of US Origin.

Proposer agrees to submit a complete bill of materials with the origin of each component. The bill of materials must be submitted as a condition of retainage release where retainage is part of the contract.

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

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

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

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

#### Certificate of Non-Compliance with 49 U.S.C. 5323(j) (1)

The Proposer hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2) (B) or (j) (2) (D) and the regulations in 49 CFR § 661.7.

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

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

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

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

**THIS FORM MUST ACCOMPANY PROPOSAL**

**LOBBYING CERTIFICATION**

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

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

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

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**THIS FORM MUST ACCOMPANY PROPOSAL**



**KITSAP TRANSIT**  
**INVITATION FOR BIDS # KT 20-675**  
**FOR**  
**Supply DC Fast Chargers**

**EXHIBIT D**  
**Sample Agreement**

**INDEPENDENT CONTRACTOR AGREEMENT  
CONTRACT KT XX-XXX**

**TITLE:** {Project Title}

**TERM:** 12:01 a.m. on Month Day, 20XX through 11:59 p.m. on Month Day, 20XX.

**PARTIES:** **KITSAP TRANSIT**

60 Washington Ave., Ste 200, Bremerton, WA 98337  
Phone: 360-824-4941 / Fax: 360-377-7086

Contacts: ; Project Manager  
; Kitsap Transit Payments & Invoicing

**Awarded Vendor**

Address:  
Phone:

Contacts: Project Manager  
Invoicing and Payment

**THIS AGREEMENT** is made and entered into this 21 day of August, 20XX by and between the KITSAP TRANSIT SYSTEM, a Washington municipal corporation, hereinafter called "KITSAP TRANSIT", **Awarded Vendor**, hereinafter called the "CONTRACTOR".

In consideration of the terms and conditions contained herein, and attached and made a part of this Agreement, the parties hereto covenant and agree as follows:

1. **Contract Documents:** This Agreement; the Bid Documents for KT XX-XXX in their entirety, including the Plans, Appendices and any Attachments; Contractor's submitted Bid and any supplemental items, as accepted by Kitsap Transit; All Addenda issued prior to and all modifications issued after execution of this Contract; shall constitute the Contract Documents and are complementary. These form the Contract and all are as fully a part of the Contract as if attached to this Contract or repeated herein.
2. **Performance:** The Contractor shall diligently perform all Work and furnish all tools, materials, and equipment in accordance with and as described in the attached Bid Documents and Contract Drawings; and as directed shall perform any changes in the Work in accordance with the Contract Documents; and shall provide and bear the expense of all equipment, Work and labor, of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the Work provided for in these Contract Documents, except any items mentioned therein to be furnished by Kitsap Transit.
3. **Time of Performance:** 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 status within **Number** (XX) Working Days of said Notice.
4. **Rate of Payment shall not exceed \$** as set forth on the Contractor's Bid Form, attached herein by reference, unless a written Change Order is permitted pursuant to ARTICLE 6.00 hereunder and elsewhere in the Contract Documents. Kitsap Transit shall pay the Contractor in current U.S. funds subject to the terms, conditions, additions and deductions as provided in the Contract Documents.
5. The parties accept that this Agreement is the complete expression of the terms hereto and any oral representation or understandings not incorporated herein are excluded. Further, any modification

of the 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. The parties also agree that the forgiveness of the non-performance of any provision of this Agreement does not constitute a waiver of all other provisions of this Agreement. It is further provided that no liability shall attach to by reason of entering into this Contract, except as provided herein.

## **ARTICLE 1.00 ADDITIONS OR DELETIONS**

Kitsap Transit reserves the right to add or delete items, agencies, or locations, as determined to be in its best interest, provided such items, agencies or locations are related to those on Contract and will not represent a significant increase or decrease in size or scope of the Contract. Such additions or deletions will be by mutual agreement, will be at prices consistent with the original Bid, and will be evidenced by issuance of a written Contract Amendment issued by Kitsap Transit in accordance with ARTICLE 6.00 below.

## **ARTICLE 2.00 ASSIGNMENT**

The Contractor shall not assign its obligations, transfer any interest, or sublet the service provided under this Contract, or any part thereof, without prior written consent of Kitsap Transit nor shall it assign, by Power of Attorney or otherwise, any of the monies payable under this Contract unless by and with the like consent of Kitsap Transit. In the event consent is given by Kitsap Transit to permit subletting, no such consent shall be construed as making Kitsap Transit a party to such Subcontractor or assignee, or of subjecting Kitsap Transit to liability of any kind whatsoever, to any Subcontractor. No Subcontractor shall, under any circumstances, relieve the Contractor of its liability and obligation under this Contract and all transactions with Kitsap Transit shall be made through the Contractor.

## **ARTICLE 3.00 COMPLIANCE WITH LAWS AND REGULATIONS**

**3.01 General Requirement:** The Contractor will at all times, at its sole cost and expense, comply with all applicable Federal, State and local laws, ordinances, regulations, orders, and codes in regards to all matters of its business operation and to performance of the Work and services under this Contract.

**3.02 Registration:** The laws of the State of Washington require that the Contractor must be registered in the State of Washington. Out-of-state corporations must secure authority from the Secretary of State to transact business in the State of Washington. Accordingly, before Kitsap Transit can enter into a Contract with an out-of-state or foreign corporation, such entity must comply with Washington's corporation laws. Information and application forms relative thereto may be obtained from the Corporations Division, Office of the Secretary of State, PO Box 40234, Olympia, Washington 98504. The Corporate Information Line is (360) 725-0377 or e-mail at [corps@sos.wa.gov](mailto:corps@sos.wa.gov).

**3.03 Licenses, Permits and Similar Authorizations:** The Contractor, at no expense to Kitsap Transit, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, fees, bonds, inspection fees, and similar legal authorizations for performance and completion of the Contract Work. It is Contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with all related requirements. If for any reason the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify Kitsap Transit immediately of such condition in writing.

**3.04 Taxes:** If applicable, the Contractor will be responsible for adding sales tax to amounts due under the Contract and making payment of sales tax to the State of Washington, as determined by the Washington State Department of Revenue. All other taxes required by statute or regulation are the sole responsibility of the Contractor. No adjustments will be made in the Contract Amount because of any misunderstanding by, or lack of knowledge of, the Contractor as to liability for, or the amount of, any taxes for which the Contractor is solely liable or responsible for by law, or under this Contract, or because of any increase in tax rates imposed by any federal, State or local government. No charge by Contractor shall be made for Federal Excise Tax and Kitsap Transit agrees to furnish the Contractor with an exemption certificate where appropriate.

**3.05 Wage and Hours Laws:** The Contractor shall comply with all applicable provisions of the Fair Labor Standards Act (FLSA) and all other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall, at all times, save Kitsap Transit free, clear and harmless from all actions, claims and expenses arising out of said Act and rules and regulations that are or may be promulgated in connection herewith.

#### **ARTICLE 4.00 CONFLICTS OF INTEREST, GIFTS AND CONTEMPORANEOUS EMPLOYMENT**

**4.01** Kitsap Transit employees, agents, officers and board members may not solicit or accept gratuities, gifts, favors, other special consideration or anything of economic value from any present or potential Contractor, Subcontractor, supplier, vendor, customer, client, or any individual or organization doing or seeking business with Kitsap Transit. Use of one's position in a manner that constitutes a real or apparent personal or organizational conflict of interest or personal gain is strictly prohibited (FTA Cir 9030.1D).

**4.02 Current and Former Employees:** No current or former employee of Kitsap Transit and their immediate family members, or agents, officers, and board members of Kitsap Transit, 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. It is unethical for any Kitsap Transit employee who is participating directly or indirectly in the procurement process to become or to be, while such a Kitsap Transit employee, the employee of any person contracting with Kitsap Transit.

**4.03 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.

#### **ARTICLE 5.00 CONFLICT AND SEVERABILITY**

**5.01** In the event of conflict between the Bid Documents and the terms and conditions of the Contract, Kitsap Transit, in its sole authority, shall determine which requirement shall apply and be considered the legally binding requirement. In the event of conflict between the Contract Document in its entirety and applicable laws, codes, ordinances, or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Contract.

**5.02** In the event that any provision, portion, or application of this Contract is held to be unenforceable or invalid by any court of competent jurisdiction, Kitsap Transit and the Contractor shall negotiate an equitable adjustment in the provision of this Contract with a view toward effecting the purpose of this Contract and the validity and enforceability of the remaining provisions, or portions of applications thereof, shall not be affected thereby. Any provision of the Contract Documents found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Contract.

## **ARTICLE 6.00 CONTRACT MODIFICATIONS**

**6.01** No alterations or variances of any of the terms, conditions, delivery, price, quantities, or Specifications of this Contract shall be effective without written consent of Kitsap Transit. Oral changes, amendments or agreements are not permitted. When it is necessary to modify the Contract Documents, either Kitsap Transit or the Contractor may initiate a Change Request. If any 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 Contract, whether changed or not changed by any such order, an Equitable Adjustment shall be made in the Contract Price or Contract Time, or both, without invalidating any other portion of the Contract. Prior to becoming a Contract modification, all changes to the Contract must be prepared in writing and fully executed by both parties. Only Kitsap Transit's Contracts Administrator shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of Kitsap Transit.

**6.02** The Contractor must assert its right to an adjustment under this clause by delivering a written Change Request to Kitsap Transit which states the general nature and monetary extent of the claim. Kitsap Transit may require additional supporting documents in order to perform a cost analysis to determine the validity and reasonableness of the claim. If Kitsap Transit requests a change, the Contractor shall submit to Kitsap Transit, within seven (7) days after Contractor's receipt of any change request, a detailed price schedule proposal for the Work or service to be performed and note any modifications of other Contract provisions that may be required as a result of the change. No claim by the Contractor for an Equitable Adjustment hereunder will be allowed for any costs incurred more than seven (7) days before the Contractor gives written notice.

**6.03** Any change exceeding twenty-five percent (25%) of the Contract Amount is considered a "Cardinal Change" and will not be permitted. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract titled "Disputes" (ARTICLE 10.00); however, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

## **ARTICLE 7.00 DELIVERY**

All Work or services must be made at the applicable project site location in accordance with the Contract Documents and time frames outlined therein or otherwise agreed upon. The acceptance by Kitsap Transit of late performance with or without objection or reservation shall not waive the right to claim damage for such breach nor preclude Kitsap Transit from pursuing any other remedy provided herein, including termination, nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by the Contractor.

## **ARTICLE 8.00 DETERMINATION OF RESPONSIBILITY**

Should the Contractor be determined to be in violation of Federal, State, or local laws or regulations, Kitsap Transit reserves the right to modify its initial determination of responsibility at the time of Award and take other action as determined appropriate, including but not limited to termination of the Contract.

#### **ARTICLE 9.00 DEVIATION FROM CONTRACT**

The Contractor shall not make any alterations or variation in or addition to or deviation or omission from the terms of this Contract without the prior written consent of Kitsap Transit.

#### **ARTICLE 10.00 DISPUTES**

**10.01 Decision of the Executive Director:** Except for Bid protest, any dispute concerning a question of fact or arising in the performance under this Contract which is not resolved by agreement of the parties shall be decided in writing by Kitsap Transit's Executive Director. Claims include, without limitation, controversies arising under the Contract and those based upon breach of Contract, mistake, misrepresentation, or other cause for Contract modification or revision. The decision of the Executive Director shall be promptly issued in writing and shall be immediately mailed or otherwise furnished to the Contractor. The decision shall state the reason(s) for the decision reached, and shall inform the Contractor of its appeal rights stated below. The Executive Director's decision shall be final and conclusive unless, within seven (7) calendar days from the date of receipt of the decision, the Contractor mails or otherwise delivers a written appeal to the Kitsap Transit Board of Directors, or commences an action in a court of competent jurisdiction. If the Executive Director does not issue a written decision regarding any Contract controversy within seven (7) calendar days after the Contractor's written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if any adverse decision had been received. The Contractor's failure to timely submit a dispute against the Executive Director's decision shall waive any relief that might otherwise be due with respect to such dispute.

**10.02 Performance During Dispute:** Pending final resolution of a dispute, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Executive Director's decision.

**10.03 Appeals:** The Contractor may appeal the Executive Director's decision to the Kitsap Transit Board of Directors by submitting a written Notice of Appeal to the Board Chairperson within seven (7) calendar days of receipt of the Executive Director's decision which shall be deemed received within three (3) days, exclusive of Sundays and holidays, of the date of posting of the decision, or sooner in the event of actual receipt of personal service or fax confirmation. The appeal shall be based solely upon the record before the Executive Director. A three-member committee of the Kitsap Transit Board, as appointed by the Board, shall decide the appeal. The Contractor must submit their written argument to the Committee. The Committee may affirm or reverse the decision of the Executive Director or reverse the decision in part. The decision of the Committee shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as to constitute bad faith, or not supported by substantial evidence. No action challenging such decision shall be brought more than one year from the date of the Contractor's receipt of such decision.

**10.04 Rights and Remedies:** The duties and obligations imposed by the Contract Documents and the rights and remedies herein shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Kitsap Transit or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of

or acquiescence in any breach thereunder, except as may be specifically agreed in writing. All claims, counterclaims, disputes and other matters in question between Kitsap Transit and the Contractor arising out of or relating to this Contract or its breach will be decided by mediation if the parties mutually agree, or in a court of competent jurisdiction within Kitsap County, State of Washington. Either party may request in writing that a dispute be submitted to mediation. Absent an agreement to a mediator, the mediation shall be conducted by Judicial Dispute Resolution (JDR) located in Kitsap County, Washington. The parties shall be equally responsible for the cost of any mediation. Mediation is optional and neither party is compelled to participate.

**10.05** This "dispute" clause does not preclude consideration of law questions in connection with decisions provided for in the paragraphs above; provided that nothing in this Contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

#### **ARTICLE 11.00 EMERGENCY, DISASTERS AND FORCE MAJEURE**

**11.01 Force Majeure Definition:** The term "Force Majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force Majeure shall include acts of nature, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. Except for payment of sums due, neither party shall be liable to the other or deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure.

**11.02** The following shall be in effect during major emergencies or disasters:

- The Contractor acknowledges that government agencies are procuring goods/services for benefit of the public and therefore agrees, in support of public good purposes, to consider these government customers as first priority and shall make a best effort to provide the requested goods/services in as timely a manner as practicable.
- The Contractor and Kitsap Transit agree that a major emergency or disaster includes, but is not limited to: storms, high winds, earthquakes, floods, hazardous material releases, transportation mishaps, loss of utilities, fires, terrorist activities or combinations of the above.
- In the event the Contractor is unable to meet the delivery requirements, or is prevented from making delivery to the requested location, due to circumstances beyond its reasonable control, the Contractor agrees to make such delivery as soon as practicable or shall immediately assist Kitsap Transit in whatever reasonable manner to gain access to such goods or services or offer limited substitutions for consideration.

**11.03 Notification:** If either party is delayed by Force Majeure, said party shall provide written notification to the other within forty-eight (48) hours. The notification shall provide evidence of the Force Majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Contract modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

**11.04 Rights Reserved:** Kitsap Transit reserves the right to cancel the Contract and/or purchase materials, equipment or services from the best available source during the time of Force Majeure and the Contractor shall have no recourse against Kitsap Transit.

**ARTICLE 12.00 ENFORCEMENT COSTS**

In the event of litigation between the Parties hereto, declaratory or otherwise, for the enforcement of this Contract, or as a result of this Contract in any way, the prevailing party shall be entitled to recover from the other party, its reasonable attorney's fees and other costs incurred in such action or proceeding. In the event that the Parties engage in arbitration, mediation or any other alternative dispute resolution (ADR) forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the ADR method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the ADR method.

**ARTICLE 13.00 ENGLISH LANGUAGE**

All documentation and any other written, oral, or other communications required in the performance of the Contract shall be prepared using the English language as used throughout the U.S. If English is not the prevalent language used at the job site, a person fluently proficient in the other language(s) used and in English shall be available to the representative during all working hours for interpretation.

**ARTICLE 14.00 ERRORS AND OMISSIONS**

If, at any time during the performance of this Contract, the Contractor becomes aware of any errors, omissions, discrepancies and actual or potential problems between the Contract Documents and any Federal, State or local law, rule, or regulation, the Contractor shall give immediate written notice thereof to Kitsap Transit's Contracts Administrator. Until such written notification has been given and one business day has elapsed, any services performed by the Contractor after such discovery will be done at the Contractor's risk.

**ARTICLE 15.00 INDEMNIFICATION, HOLD HARMLESS AND STATUS**

To the maximum extent permitted by law, the Contractor shall defend, protect, indemnify and hold harmless Kitsap Transit, its officers, employees and agents from and against any and all claims, demands, suits, penalties and liability of any kind, including injuries to persons or damages to property, which arise out of or are due to any acts, errors, or omissions of the Contractor, or the Contractor's employees, agents, and representatives in performing Work and services under this Contract provided; however, that if such liability is caused by or results from the concurrent negligence of Kitsap Transit, its officers, employees and agents, and the Contractor, or its employees and agents, this provision shall be valid and enforceable only to the extent of the Contractor's negligence; and provided further, that nothing herein shall require the Contractor to hold harmless or defend Kitsap Transit, its officers, employees and agents from any claims arising from the sole negligence of Kitsap Transit, its officers, employees and agents. The sole obligation to defend includes the payment of all reasonable attorney's fees and costs of Kitsap Transit's defense of any claim, suit or action within the scope of this Section whether or not suit was instituted. The Contractor specifically waives any immunity under the Industrial Insurance Act and assumes all liability for actions brought by him/her or his/her employees against Kitsap Transit for injuries in the performance of this Contract. The Contractor represents that this waiver has been negotiated with Kitsap Transit. Kitsap Transit will give the Contractor prompt notice in writing of the institution of any suit or proceeding and permit the Contractor, through its counsel, to defend same and will give all needed information, assistance and authority to enable the Contractor to do so. This Article does not modify any other articles regarding any other conditions as are elsewhere agreed to herein between the parties.

**ARTICLE 16.00 INSPECTION AND REJECTION**

**16.01** Kitsap Transit's inspection of all materials, equipment or services upon delivery is for the sole purpose of identification and shall not be construed as Final Acceptance or as acceptance of the materials, equipment or services if such does not conform to contractual requirements. If there



are any apparent defects in the materials, equipment or services at the time of delivery, Kitsap Transit will promptly notify the Contractor thereof. If there are defects detected post-delivery, Kitsap Transit will notify the Contractor with a description of such non-compliance. Within seven (7) days of receiving such written notification, the Contractor shall provide Kitsap Transit with a detailed written plan which indicates the time and methods needed to bring the Work in compliance with the Contract. Without limiting any other rights, Kitsap Transit may require the Contractor to: 1) repair or replace any or all of the damaged goods at Contractor's expense; 2) refund Kitsap Transit the full price paid for any or all of the damaged goods and accept the return of such damaged goods. If Kitsap Transit rejects the Contractor's written plan, the Contractor may be determined to be in material default of the Contract.

**16.02** 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. Acceptance by Kitsap Transit of unsatisfactory performance, with or without objection or reservation, shall not waive the right to claim damage for breach, or terminate the Contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by the Contractor.

## **ARTICLE 17.00 INSURANCE REQUIREMENTS**

The Contractor, at its sole expense and for the duration of the Contract, will purchase and maintain all insurance described herein to protect Kitsap Transit against any and all claims for damages to persons or property arising under Contract performance, whether by reason of acts or omissions of the Contractor or anyone directly or indirectly employed by the Contractor, and shall hold Kitsap Transit harmless for any claims presented to it as a result of the Contractor's negligence. Policies shall be endorsed and will not be canceled, materially changed or altered without thirty (30) days prior written notice submitted to the Kitsap Transit Risk Manager. Any exclusion must be pre-approved by the Risk Manager.

**17.01 Additional Insured Endorsement:** Language such as the following will be used in the description area of the ACORD Certificate when referring to the "Contracting Agency": **"KITSAP TRANSIT, ITS OFFICERS, AGENTS, AND EMPLOYEES ARE NAMED ADDITIONAL INSURED AS RESPECTS TO CONTRACT "{Project Title KT XX-XXX}"**.

Additional Insured Endorsement: General Liability Insurance must state that Kitsap Transit will be specifically named additional insured(s) for all coverage provided by this policy of insurance and shall be fully and completely protected by this policy from all claims. 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.

- 17.02 Subcontractors:** The Contractor shall include all Subcontractors, regardless of tier, as insured under all insurance policies required herein, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor providing their own coverage will also name Kitsap Transit as an Additional Insured on their General Liability insurance policies and such a copy will be provided to Kitsap Transit. Failure of Subcontractor(s) to comply with insurance requirements does not limit the Contractor's liability or responsibility.
- 17.03 Excess Liability:** Coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor from liability in excess of such limits. Nothing contained within the insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained with this provision shall affect and/or alter the application of any other provision contained with this Contract.
- 17.04 Cancellation:** In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, the Contractor shall provide written notice of such to Kitsap Transit within one (1) business day of the Contractor's receipt of such notice.
- 17.05 Attorney Fees:** If a lawsuit in respect to this insurance provision ensues and the amount of the liability claimed exceeds the amount of insurance coverage, the Contractor shall authorize representatives of Kitsap Transit to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. The Contractor shall appear and defend that lawsuit at its own cost and expense, and if judgment is rendered or settlement made requiring payment of damages by Kitsap Transit, its officers, agents, and employees, the Contractor shall pay the same.
- 17.06 Failure of Coverage:** The Contractor's failure to fully comply with these insurance requirements during the term of the Contract shall be considered a material breach of Contract upon which Kitsap Transit may, after giving five (5) business days written notice to the Contractor to correct the breach, immediately terminate the Contract; or at its discretion, alternatively procure and maintain in the name of the Contractor and at the Contractor's sole expense, such types of insurance to the extent deemed proper up to the amount of the required coverage(s). Kitsap Transit may offset the cost of such insurance against payment due to the Contractor under the Contract. If Kitsap Transit is damaged by the failure of the Contractor to maintain any of these insurance requirements, or to so notify Kitsap Transit, then the Contractor shall bear all costs attributable thereto. Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder. Furthermore, the Contractor's failure to provide such insurance in a time frame acceptable to Kitsap Transit shall enable Kitsap Transit to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination For Convenience/Default".
- 17.07 Rights of Subrogation:** Kitsap Transit reserves and retains its rights of subrogation and shall further have the right, at its election and expense, to pursue collection and recovery from any and all responsible third parties. The Contractor shall cooperate with Kitsap Transit in such recovery and collection, and shall make its records and personnel available. As to an accident or incident to which this paragraph is applicable, any and all sums so recovered by Kitsap

Transit as provided hereunder, after deduction only of court costs, shall be reimbursed to the Contractor. The pendency of any collection efforts against third parties, including litigation, shall in no way delay or diminish the obligation of the Contractor to promptly remit the sums due to Kitsap Transit under the provisions of this subpart.

#### **ARTICLE 18.00 JOINT VENTURE CONTRACTOR**

In the event the Contractor is a joint venture of two or more Contractors or is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder. All grants, covenants, provisos, claims, rights, powers, privileges, and liabilities of the Contract shall be construed and held to be severally and jointly. Any notice, order direction, request or other communications required to be or that may be given by Kitsap Transit to the Contractor under this Contract shall be well and sufficiently given to all persons being the Contractor if given to any one or more of such persons.

#### **ARTICLE 19.00 JURISDICTION LAWS AND VENUE**

This Contract shall be governed in all respects by the laws of the State of Washington and authorities having jurisdiction over the Contract Work will be deemed to be included in the Contract the same as though herein written out in full. The jurisdiction for any action hereunder shall be exclusively brought in the Superior Court for Kitsap County in the State of Washington.

#### **ARTICLE 20.00 LIENS, CLAIMS AND ENCUMBRANCES**

All materials, equipment, or services performed or delivered by the Contractor shall be free of all liens, claims, or encumbrances of any kind.

#### **ARTICLE 21.00 NON-DISCRIMINATION**

**21.01** Kitsap Transit is an Equal Opportunity Employer. With respect to performance under this Contract, the Contractor shall take such action as may be required to ensure full compliance with Chapter 49.60 RCW, Discrimination and Title VI of the Civil Rights Act of 1964. The Contractor shall not discriminate against any client, employee, or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age, Vietnam-era veteran status, disabled veteran status, income level, or disability; or the presence of any sensory, mental or physical handicap except for a bona fide occupational qualification with regard to, but not limited to the following: Employment upgrading, demotion or transfer, recruitment or any recruitment advertising, layoffs or terminations, rates of pay or other forms of compensation, selection for training, rendition of services.

**21.02** In all solicitations made by the Contractor for Work to be performed under subcontract, including procurements of goods or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of its obligations under this Contract and the regulations relative to non-discrimination. Said assignment or subcontract shall include appropriate safeguards against discrimination, unless exempt by the regulations or directives issued pursuant thereto. In the event of breach of any of the above non-discrimination covenants, Kitsap Transit shall have the right to terminate the Contract and hold the same as if said Contract had never been made or issued. Furthermore, Kitsap Transit may bar the Contractor from performing any services for Kitsap Transit now, or in the future, unless a showing is made satisfactorily to Kitsap Transit that discriminatory practices have terminated and that recurrence of such action is unlikely.

#### **ARTICLE 22.00 OWNERSHIP OF DOCUMENTS**

All documents, data, drawings, Specifications, software applications and other products or materials produced by the Contractor in connection with this Contract shall be the property of Kitsap Transit. All such documents, products and materials shall be forwarded to Kitsap Transit at its request and may be used by Kitsap Transit as it sees fit. The Contractor shall preserve the confidentiality of all Kitsap Transit documents and data accessed for use in the Contractor's Work product.

## **ARTICLE 23.00 PAYMENT**

**23.01** All payments under this Contract are considered reimbursement for goods delivered and services rendered. **Pre-payments are not permitted.** If applicable, the Contractor and its Subcontractors shall have a business license with the City having jurisdiction over the Contract Work *prior to* any Work beginning under the Contract. Failure to provide proof of a business license may delay payment of invoices.

**23.02 Payment:** Except for retainage, payment will be made by Kitsap Transit to the Contractor within thirty (30) days after acceptance and approval of invoices by the Kitsap Transit Project Manager, *providing* a Labor and Industries approved "Statement of Intent to Pay Prevailing Wages" is received by Kitsap Transit for the Contractor and every Subcontractor who performed under the Contract *and* Certified Payrolls have been received within the specified time. Acceptance of such payment by the Contractor shall constitute full compensation for all supervision, labor, supplies, materials, Work, equipment and the use thereof, and for all other necessary expenses, incurred by the Contractor for the time period specified on the invoice.

**23.03 Prompt Payment of Subcontractors:** The Contractor, as the Prime Contractor, is required to make payment to Subcontractors within thirty (30) days from the receipt of each payment it receives from Kitsap Transit for satisfactorily completed Subcontractor Work, whether such payment is a progress or final payment. The Contractor further agrees to return any retainage payments to each Subcontractor within thirty (30) days after the Subcontractor's Work is satisfactorily completed. If payment disputes arise between the Contractor and Subcontractors, such disputes shall be resolved promptly through mediation or arbitration in order to prevent injury to Small Business Subcontractors. The Contractor shall specify in its subcontract agreements the dispute resolution method to be used. In addition, the Contractor will not be paid for Subcontractors' Work unless it can show that a prompt payment method for Subcontractors is in place. The Contractor shall be required to provide copies of the Subcontracts to Kitsap Transit showing inclusion of these provisions, especially the Federal clauses. Kitsap Transit may withhold the applicable sum due a Subcontractor for non-compliance with this Section.

**23.04 Approval of Invoices:** Prior to approval of payment, the Kitsap Transit Project Manager shall make verification of Work performed. Payment shall be based upon the Contractor's prices submitted on the Bid Form, except as may be modified by written Change Order, or on a separate written quotation for a specific aspect of individual jobs or items.

**23.05 Pay Requests:** A request for payment is to be submitted with detailed documentation of the Work completed, labor performed, and materials furnished in accordance with the Contract and shall represent the value of the Work completed less any lawful deductions such as retainage, tax or as otherwise authorized. Each pay request must contain the following minimum information: 1) Contract Number; 2) Date of invoice; 3) Invoice number; 4) Quantity, unit measure, unit price and item description, as appropriate; 5) Total price for invoice; and 6) sales tax as a separate line item, if applicable. The Contractor must ensure that all paperwork associated with a particular invoice references the same identifying number. For example, Work Orders, receiving documents, delivery tickets, etc. and the final invoice must all bear a

corresponding number that links the paperwork together. Failure to comply with this requirement may delay payment.

**23.06 Invoices shall be submitted to:** Kitsap Transit, Accounts Payable, 60 Washington Ave., Suite 200, Bremerton, WA 98337 for all transactions made during a calendar month by the 5th day of the following month.

**23.07 Final Payment:** A final application for payment shall be prepared upon completion of the Work, satisfaction of any test requirements, and fulfillment of the Contract. Retainage will be administered in accordance with RCW 60.28 as outlined elsewhere in the Contract provisions.

**23.08 Payment does not imply acceptance of Work:** The granting of any progress payment or payments by Kitsap Transit, or the receipt thereof by the Contractor, shall not constitute in any sense acceptance of the Work or a waiver of Kitsap Transit's right to reject defective or non-conforming Work, materials, or equipment, even though the same is covered by the payment, nor is it a waiver of any other rights of Kitsap Transit and shall in no way lessen the liability of the Contractor to remedy defective Work, materials, equipment or service which does not conform to the Contract Documents, though the character of such Work may not have been apparent or detected at the time such payment was made. Materials, components, or service not conforming to the instructions or the Contract requirements will be rejected and shall be replaced or remedied by the Contractor without delay. Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in RCW 39.76.

#### **ARTICLE 24.00 PERFORMANCE STANDARDS**

**24.01** The word *service(s)*, as used in this clause, includes services performed, craftsmanship, and materials or products furnished or used in performing services. The Contractor shall comply with recognized quality industry service standards as applicable. All references to standards, whether for delivery of goods, processes, assemblies, craftsmanship, performance, or similar purposes shall mean, unless otherwise noted, the most recent available published version of such standard. When reference is made to standards, the standards are to be made a part of this Contract and to have the same effect as if fully reproduced herein.

**24.02** If at any time during the performance of this Contract the Contractor becomes aware of actual or potential problems, fault or defect in the project or any non-conformance with any Contract Document, Federal, State, or local law, rule, or regulation, the Contractor shall give immediate written notice thereof to Kitsap Transit's Contracts Administrator.

**24.03** In the case of an emergency where Kitsap Transit believes delay could cause serious injury, loss or damage, Kitsap Transit may waive the written notice and either direct the Contractor correct the defect or correct the defect of its own accord. In either case, the Contractor is responsible for all costs of remedying the defect and Kitsap Transit will charge-back the cost for such repairs to the Contractor, including freight, regardless of who actually corrects the defect.

**24.04 Non-Performance of Services:** If any unsatisfactory condition or deficiency is detected, or if any of the services performed do not conform to the Contract requirements, Kitsap Transit shall give written notice to the Contractor and request that the Work be performed again in conformity with the Contract. The Contractor shall, within twenty-four (24) hours of receiving such notice, immediately facilitate the Work to repair the condition, correct the defect, error, or non-conformity to the satisfaction of the Kitsap Transit Project Manager, or designee, and at no additional cost to Kitsap Transit.

- 24.05** If the Contractor fails to initiate any corrective action procedure after receiving the first notification of unsatisfactory performance, Kitsap Transit reserves the right to dispatch a third party Contractor, or use Force Account through use of Kitsap Transit employees at a rate equal to the employee's hourly rate plus administrative costs, to perform or otherwise resolve any unacceptable Work or scope of service. The Contractor is responsible for all incurred costs, including freight, to resolve the documented issues performed by a third party Contractor or Kitsap Transit personnel. Kitsap Transit will deduct such costs from any balance due, or which may become due, to the Contractor or charge-back the cost to the Contractor regardless of who actually corrects the defect.
- 24.06** After the first occurrence of any non-performance, Kitsap Transit may send a "Notice of Non-Performance" to the Contractor detailing the exact nature of non-performance, remaining Work to be performed, and the date of non-performance. The Contractor shall acknowledge and respond to the Notice within three (3) business days of receipt and shall promptly proceed to remedy the situation described therein to Kitsap Transit's satisfaction. Receipt of notice is evidenced upon signature of certified mail return receipt or three business (3) days after mailing.
- 24.07** Continued non-performance may result in Contract termination. A further finding of non-responsibility may be determined and any future bids by the Contractor for Kitsap Transit Contracts may be rejected without consideration. Kitsap Transit may also recommend the Contractor be removed from any Small Works Roster. Acceptance by Kitsap Transit of unsatisfactory performance, with or without objection or reservation, shall not waive the right to claim damage for breach, or terminate the Contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by the Contractor.

**ARTICLE 25.00      PROPERTY LIABILITY**

Unless otherwise provided for, the Contractor assumes the risk of, and shall be responsible for, any loss or damage to Kitsap Transit furnished property in its possession, or in the possession of any agents or employees of the Contractor, resulting from the Contractor's negligent or willful misconduct, except for reasonable wear and tear in the normal performance of this Contract. The Contractor shall bear no liability for any negligent acts or abuse of property by Kitsap Transit.

**ARTICLE 26.00      RELATIONSHIP OF THE PARTIES – INDEPENDENT CONTRACTOR**

- 26.01** The Contractor is, and shall be considered at all times during the term of this Contract, an independent Contractor whereby the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee of Kitsap Transit under Chapter 41.06 Revised Code of Washington (RCW) or Title 51 RCW.
- 26.02** The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, Subcontractors or representatives during the performance of this Contract. The implementation of all services and the authority to control and direct the performance of the details of the Work lies solely with the discretion of the Contractor; however, the results of the Work contemplated herein must meet Kitsap Transit's approval and shall be subject to Kitsap Transit's general rights of inspection and review to secure the satisfactory completion thereof.
- 26.03** Any and all claims that may or might arise under the Workers' Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third

party as a consequence of any act or omission on the part of the Contractor's employees or other persons while so engaged on any of the Work or services provided to be rendered herein, shall be the sole obligation and responsibility of the Contractor.

**26.04** The Contractor shall indemnify and hold harmless Kitsap Transit from and against any and all costs (including attorney fees incurred in defense) or liabilities (including payroll taxes, penalties or interest) arising out of any breach of the above representations and warranties or any assertions that the Contractor is not an independent Contractor.

**26.05** Upon Contract execution ("Effective Date"), the Contractor agrees that it has a business account established with the Washington State Department of Revenue, and other State agencies as required by the particular case, for the payment of all State taxes normally paid by employers and businesses, and has registered for and received a Unified Business Identifier (UBI) number from the State of Washington.

#### **ARTICLE 27.00 REPRESENTATIVES**

**27.01 Kitsap Transit Representatives.** The Contracts Administrator is Kitsap Transit's designated representative for Contract compliance. Kitsap Transit's Project Manager is the designated primary representative for performance compliance. Both are listed on the front page of this Contract.

**27.02 Contractor Representative.** The Contractor shall appoint a representative as the Contract liaison agent through whom Kitsap Transit will communicate with the Contractor. The Contractor shall respond to all written communications from Kitsap Transit representatives within seven (7) calendar days from receipt.

**27.03** Either party shall have the right to change any representative or address it may have given to the other party by giving such other party due notice in writing of such change.

#### **ARTICLE 28.00 RISK OF LOSS AND TITLE**

Regardless of FOB point, the Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur before delivery and acceptance. Such loss, injury, or destruction shall not release the Contractor from any obligation hereunder.

#### **ARTICLE 29.00 SERVICE OF NOTICES**

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations desired or required to be given under this Contract by either party to the other shall be promptly made in writing and shall be sufficiently given if served upon the party to receive the same or if sent by certified mail, return receipt requested, postage prepaid, and addressed to the office of such representative as stated in this Contract, or to such other address as either party may hereafter designate in writing. Notice sent by mail shall be deemed to have been given three (3) calendar days after proper mailing. The Contractor agrees to provide copies of any notices given Kitsap Transit to such other persons or entities as Kitsap Transit may require from time to time.

#### **ARTICLE 30.00 STATE AND LOCAL LAW DISCLAIMER**

In the event that any provision, portion, or application of this Contract is held to be unenforceable or invalid by any court of competent jurisdiction, Kitsap Transit and the Contractor shall negotiate an equitable adjustment in the provision of this Contract with a view toward effecting the purpose of this Contract and the validity and enforceability of the remaining provisions, or portions of applications thereof, shall not be affected thereby.

## **ARTICLE 31.00 SUGGESTIONS TO CONTRACTOR**

Any plan or method of Work suggested to the Contractor by Kitsap Transit, but not specified or required in writing under the Contract, if adopted or followed by the Contractor in whole or part, shall be used at the risk and responsibility of the Contractor and Kitsap Transit shall assume no responsibility therefore.

## **ARTICLE 32.00 SUPERVISION AND COORDINATION**

The Contractor shall: 1) Competently and efficiently, supervise and direct the implementation and completion of all Contract requirements specified herein; 2) Designate a representative for the Work under this Contract to which all communications given by Kitsap Transit to the representative or shall be binding on the Contractor.

## **ARTICLE 33.00 SUSPENSION OF CONTRACT**

Kitsap Transit may at any time and without cause suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days by written notice to the Contractor. Kitsap Transit will not be liable for any additional travel costs incurred by the Contractor while the Work is suspended. The Contractor shall resume performance within fifteen (15) calendar days of written notice from Kitsap Transit.

## **ARTICLE 34.00 TERMINATION**

**34.01 Termination for Convenience.** Kitsap Transit may terminate this Contract, in whole or in part, at any time by written notice to the Contractor when it is in Kitsap Transit's best interest. After receipt of a written Notice of Termination, and except as directed by Kitsap Transit, the Contractor shall immediately stop Work as directed in the Notice and comply with all other requirements in the Notice. The Contractor shall be paid its costs on only that portion of the Work satisfactorily performed up to the date of termination as specified in the Notice. The Contractor shall promptly submit its termination claim to Kitsap Transit, together with detailed supporting documentation, to be paid to the Contractor. If the Contractor has any property in its possession belonging to Kitsap Transit, the Contractor will account for the same, and dispose of it in the manner Kitsap Transit directs.

**34.02 Termination for Default.** If the Contractor does not deliver supplies in accordance with the Contract delivery schedule, or fails to prosecute the Work or any separable part with the diligence that will ensure completion within the time specified in this Contract or any extension, or fails to complete the Work within this time, or if the Contractor fails to comply with any other provision of this Contract, Kitsap Transit may terminate this Contract for default. Termination shall be effected by Kitsap Transit serving a Notice of Termination on the Contractor specifying the nature of the default and the effective date of termination. In this event, Kitsap Transit may assume the Work and complete it by Contract or otherwise, and may take possession of and use any materials, equipment, and facilities on the Work site necessary for completing the Work. The Contractor and its Sureties shall be liable for any damage to Kitsap Transit resulting from the Contractor's refusal or failure to complete the Work within the specified time, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by Kitsap Transit in completing the Work. The Contractor will only be paid the Contract Price for supplies delivered and accepted, or on only that portion of the Work satisfactorily performed in accordance with the manner of performance set forth in the Contract, less any damages to Kitsap Transit caused by such default, up to the date of termination as specified in the Notice. If the Contractor has any property in its possession belonging to Kitsap Transit, the Contractor will account for the same and dispose of it in the manner Kitsap Transit directs. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:



- 1) The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Kitsap Transit, acts of another Contractor in the performance of a Contract with Kitsap Transit, epidemics, quarantine restrictions, strikes, freight embargoes; and
- 2) The Contractor, within ten (10) calendar days from the beginning of any delay, notifies Kitsap Transit in writing of the causes of delay. If in the judgment of Kitsap Transit the delay is excusable, the time for completing the Work shall be extended. The judgment of Kitsap Transit shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Kitsap Transit.

**34.03 Opportunity to Cure.** Kitsap Transit in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) calendar days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If the Contractor fails to remedy to Kitsap Transit's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) calendar days after receipt by the Contractor of written notice from Kitsap Transit setting forth the nature of said breach or default, Kitsap Transit shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude Kitsap Transit from also pursuing all available remedies against the Contractor and its Sureties for said breach or default.

**34.04 Waiver of Remedies for any Breach.** In the event that Kitsap Transit elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Contract, such waiver by Kitsap Transit shall not limit Kitsap Transit's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

#### **ARTICLE 35.00 WAIVER OF RIGHTS BY KITSAP TRANSIT**

Kitsap Transit shall be deemed to have waived a right or remedy only if issued or confirmed in writing as a waiver by Kitsap Transit. No waiver of one right or remedy shall act as a waiver of any other right or remedy or as a subsequent waiver of the same right and remedy.

#### **ARTICLE 36.00 WARRANTY OF TITLE**

**36.01** The Contractor shall have no property right in the materials and equipment used after they have been attached or affixed to the Work or existing real property, or after any payment has been made by Kitsap Transit towards the value of materials delivered to the site of the Work, or stored subject to or under the control of Kitsap Transit. Title to all such materials shall become the property of Kitsap Transit upon being so attached or affixed, or after any payment towards the value of materials stored off site or delivered to the site of the Work, or stored subject to or under the control of Kitsap Transit, whichever occurs earlier.

**36.02** No material, supplies, equipment, or items for the Work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein, or in any part thereof, is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies, equipment, and items installed or incorporated in the Work and are free from any claims, liens, or charges. Neither the Contractor, nor any person, firm, nor corporation furnishing any material or labor for any Work covered by this Contract shall have any right to lien upon any improvement or appurtenance thereon. This Article shall not defeat or

impair the right of the persons furnishing materials or labor to recover under any Payment Bond given by the Contractor for their protection, or any rights under State law permitting such persons to look to retained funds due the Contractor in the hands of Kitsap Transit.

**36.03** The provisions of this Article shall be inserted or referenced in, or otherwise made a part of all subcontracts and material Contracts, and notice of its provisions shall be given to all persons furnishing materials for the Work whenever no formal Contract is entered into for such materials. Additionally, as part of the subcontract, material Contract, or notice, the Contractor shall provide to such Subcontractors and suppliers the name, address, and phone number of the Contractor's bonding company and the bond number applicable to the Contract under which the Subcontractor or supplier would make its claim.

**ARTICLE 37.00 ENTIRE CONTRACT**

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. 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 forgiveness 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 hereinabove written.

TRANSIT:

CONTRACTOR:

KITSAP TRANSIT  
60 Washington Ave.  
Suite 200  
Bremerton, WA 98337

Contractor  
Address  
Address  
City, WA 98104

\_\_\_\_\_  
By: John W. Clauson  
Its: Executive Director

\_\_\_\_\_  
By: Name  
Its: Title