

Mason County
Public Transportation Benefit Area
(DBA)
Mason Transit Authority (MTA)

790 East Johns Prairie Road
Shelton WA, 98584
(360) 426-9434 (Ext. 110)

REQUEST FOR QUALIFICATIONS
DESIGN AND ENGINEERING SERVICES FOR THE PARK AND RIDE
DEVELOPMENT PROJECT

January 22, 2016

Proposals are due Friday, March 4, 2016 at 2PM

Failure to include any of requested information and properly completed forms and documents may be cause for the rejection of the Proposal.

Mason Transit Authority (MTA), 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.

MTA reserves the right to reject any and all proposals without cause and to waive any informalities or irregularities.

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Section 1: Introduction

MTA announces its intention to seek qualifications from interested, qualified and experienced firms to assist in concept and environmental assessment, public engagement, preliminary design, property acquisition through construction completion related services as outlined by this Request for Qualifications (RFQ) package.

Proposals [one (1) original plus four (4) copies] must be submitted in accordance with requirements set forth in the RFQ **NO LATER THAN 2:00 P.M. FRIDAY, MARCH 4, 2014**. Late proposals will not be accepted and will be returned to the respondent unopened.

MTA reserves the right to schedule and host a pre-proposal conference if needed. MTA intends to address questions and concerns through addenda and/or email communications as needed during consultant submittal and review process.

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

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

This procurement may be partially funded by the United States Department of Transportation, Federal Transit Administration (FTA). Proposers will be required to comply with all applicable FTA, FHWA, State, and Local rules and regulations.

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

Qualifications-based competitive proposal procedures require that:

- (1) A Proposer's qualifications be evaluated;
- (2) Price is excluded as an evaluation factor;
- (3) Negotiations are conducted with only the most highly qualified Proposer; and
- (4) Failing agreement on price, negotiations with the next most highly qualified Proposer be conducted until a contract award can be made to the most highly qualified Proposer whose price is fair and reasonable to the grantee.

Project Overview

MTA is soliciting qualifications from architects/engineers to design, and support the Park and Ride Development Project located within Mason County (Attachment E). On December 15, 2015, the Mason Transit Authority Board of Directors authorized staff to execute agreement number GCB-2304 with the Washington Department of Transportation, Public Transportation Division. This is a Federal and State Construction Grant Agreement.

Available Budget

The total amount of project funds available for the current biennium (2015-2017) is \$3,004,134. It is anticipated that MTA will receive the second biennium funding for the project shortly before the June 2017 end of the current biennium funding period. The total amount for the second period is projected to be \$9,632,966 for a combined two biennium project total of \$12,637,100. The 2017-2019 funding is subject to legislative approval. Funding provided for this project includes a mix of Local, State, and Federal portions.

Desired Qualifications

This project will require a firm or team that possesses the skills and experience necessary to design fully operational transit park and ride facilities within Mason County. Successfully completing this project will require that the respondent demonstrate expertise and experience in the following areas, at a minimum:

- Expertise in structural, civil, environmental, geotechnical, transportation, mechanical & electrical engineering.
- Expertise in transit facility architecture and design.
- Knowledge of and experience with WSDOT and local jurisdiction design requirements related to (but not limited to) geotechnical, environmental, traffic, and right of way standards.
- Working experience with right-of-way acquisition procedures under federal and state laws.
- Understanding of procurement and construction management processes to provide a complete and workable project.
- Proficient in management of all project work and coordination of sub-consultant's work.
- Working understanding of design of transit networks and routes as they relate to other transportation modes and facilities.
- Expertise in implementing successful public outreach/engagement efforts.

1.1 Request for Qualifications Process

Step 1: Receipt of proposals.

Step 2: Evaluation of Proposals

Step 3: Proposal Presentations (If required by Mason Transit Authority)

Step 4: Selection of Top Qualified Proposer

Step 5: Reference Checks

Step 6: Contract Price Negotiation with Top Qualified Proposer

Step 7: Notice to All Proposers of Intent to Award

Step 8: Award of the Contract to the most qualified proposer by Mason Transit Authority

1.2 Advertising

Advertised in: Mason County Journal

Mason Transit Website masontransit.org

Daily Journal of Commerce

END OF SECTION 1

Section 2: Instructions to Proposers

Mason Transit Authority is a public transportation benefit authority (PTBA) with administrative offices located at 790 E. Johns Prairie Road, Shelton, WA 98584. Request for Proposals are being solicited from qualified sources. Copies of the Request for Proposals may be obtained by contacting Mike Oliver, Development Manager, at moliver@masontransit.org or via MTA's website <http://www.masontransit.org>. Proposers downloading the RFQ from the website must contact Mike Oliver at the email above to receive addenda information regarding this document should the need arise.

2.1 Proposal Due Date

Mailed or hand-delivered sealed proposals will be accepted at Mason Transit Authority's Main Administration Office, reception desk NO LATER THAN **2:00 P.M. PST**, on **March 4, 2016** and must be addressed as **MTA RFQ Proposal to Provide Design and Engineering Services Park and Ride Development Project, Mike Oliver, Mason Transit Authority, 790 E. Johns Prairie Road, Shelton, Washington, 98584**. Late proposals will be rejected and returned to the Proposer unopened. Faxed and emailed proposals will NOT be accepted.

Each Proposal shall be completely sealed and addresses to the address shown above with the name and address of the Proposer and the name of the project plainly written on the outside of the envelope. A complete proposal shall include:

1. Technical Proposal, sealed envelope
2. Bidder's Affidavit (Exhibit A)
3. Addenda Acknowledgement Form (Exhibit C)
4. FTA Clauses Acknowledgement Form (Attachment A)
5. Lobbying Certificate (Attachment C)

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

2.2 Requests for Information (RFI), Communications and Addenda

Proposers who seek to obtain information, clarification, or interpretations from contacts other than the MTA Development Manager are advised that such material is used at the Proposer's own risk. MTA 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. Mason Transit Authority staff will not answer questions regarding this RFQ verbally. All questions must be submitted in writing via email.**

To be given consideration, any and all communications requesting information, material substitutions, clarifications, and inquiries concerning this solicitation must be submitted in writing received NO LATER THAN 4:00 P.M. on February 19, 2016 to be considered in an Addendum. Written inquiries shall be directed to MTA via email to moliver@masontransit.org

2.3 Planholders' List:

All prospective Proposers are required to register as "Planholders" to receive addenda or clarifications regarding the solicitation. It is recommended that Proposers notify Mike Oliver of their intent to submit a proposal and register with MTA Planholders' 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 MTA’s website at <http://www.masontransit.org> during the Proposal period and before submitting your Proposal.

All submitted proposals and attachments become the property of MTA 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

Mason Transit Authority is a public agency. This project contains Federal Funding. MTA cannot pay for services that have not been received. Therefore, we cannot provide a deposit or advance payment.

All payments to Contractor shall be remitted by US mail. Invoices shall be mailed to:

Mason Transit Authority
Finance Department
790 E. Johns Prairie Road
Shelton, WA 98584

No payment, whether monthly or final, to the Contractor for any services shall constitute a waiver or release by MTA 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 MTA 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.

2.7 Title VI

It is the policy of Mason Transit Authority 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. MTA’s Title VI policy may be viewed via the link at MTA’s website.

2.8 Calendar of Events

The following is the approximate RFQ procurement schedule from issuance through Project start-up. This time schedule is fixed through Questions / Request for Clarifications Deadline. Based upon the number and nature of the questions received, the Development Manager may modify the remainder of the schedule. MTA will notify all Proposers of any schedule changes by written addendum.

<u>Activity</u>	<u>Date</u>
Request for Qualifications Published	Friday, January 22, 2016
Written Questions / Request for Clarifications Deadline	Thursday, February 11, 2016
MTA’s Response to Questions/Clarifications Deadline	Friday, February 19, 2016
Proposal Due Date	2:00 P.M. Friday, March 4, 2016
Proposal Evaluation Complete	Friday, March 11, 2016
Finalists Determined	Friday, March 11, 2016
In-Person Interviews	Week of March 21, 2016
Final Evaluation Scores Completed - Make Selection	Tuesday, April 05, 2016

Contract Price Negotiation	TBD
Transit Board Award of Contract	Tuesday, April 19, 2016
Final Award Notice mailed to Proposers	Wednesday, April 20, 2016
Contract Commencement Date	TBD

2.9 General Information for Proposers

Proposers must be fully insured and registered to conduct business in the State of Washington and licensed for business in their state of residence. Policies of insurance, as outlined in Section 7.5 shall be obtained and kept in force for the duration of the Contract.

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

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

MTA 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 MTA.

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

MTA 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

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

2.13 Award

Mason Transit Authority 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 MTA 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. MTA will not be responsible for any costs incurred by Proposers in preparing, submitting, or presenting their response to this RFQ.

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

2.14 Validity of a Protest

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

2.15 Non-Submittal/No Bid

If you determine not to submit a Proposal in response to this RFQ, MTA would appreciate your completing and returning the "No Bid Form" (See Attachment B). Please state the reason why a proposal could not be submitted at this time. Information gathered will provide insight into how we can improve our process, conditions, or specifications to reach our goal of creating a competitive, level playing field for all potential Proposers. The "No Bid Form" may be sent via USPS or email.

END OF SECTION 2

Section 3: General Scope of Work

MTA seeks the support from the most qualified team, including engineers and architects to design, and support the construction of the MTA Park and Ride Development Project as described in the project overview. Currently, conceptual design and environmental work is funded and will begin in 2016. Contingent upon legislative approval for the 2017-2019 biennium period, the project could be completed as early as 2018. Portions of work align with broad definitions of design, right-of-way and construction portions of the project.

Concept Design and Environmental Assessment

The successful outcome for this particular effort is to produce concept design documents and updated environmental site assessment in accordance with, federal, state and local design guidelines and specifications for construction of a park and ride development project. In 2015, Mason Transit Authority staff identified several possible locations for proposed “new” park and ride development within Mason County. These parcels were identified as “possible adequate locations” with no public outreach and no formal decisions made. This was a research effort only. Information on the “possible” locations is referenced in Section 1, Project Overview. The following tasks should be undertaken as part of the conceptual and environmental assessment phase of the project.

1. Conduct appropriate project management to ensure that continuous and collaborative coordination takes place with partner agencies and stakeholders.
2. Conduct additional environmental assessment of the project to meet the requirements of NEPA and SEPA necessary to advance the project and improvements to Categorical Exclusion (CE), or Documented Categorical Exclusion (DCE), and Determination of Non-Significance (DNS).
3. Conduct traffic analysis and traffic studies as needed associated with the project. In coordination with the County, City, and WSDOT.
4. Conduct traffic analysis and studies as needed associated with improvements to any affected roadway.
5. Prepare conceptual design to include right-of-way and construction level cost estimates for construction of the park and ride project, and improvements to any affected roadway.

Preliminary Design

The successful outcome for this particular effort is to produce design documents that meet all environmental requirements, federal, state and local design guidelines and specifications for construction of a park and ride development project. The following tasks should be undertaken as part of the preliminary engineering phase of the project.

1. Conduct appropriate project management to ensure that continuous and collaborative coordination takes place with partner agencies and stakeholders.
2. If required, conduct additional environmental assessment of the project to meet the requirements of NEPA and SEPA necessary to advance the project and improvements to CE or DCE, and DNS.
3. Conduct further traffic analysis and traffic studies associated with the project. In coordination with the County, City, and WSDOT, and conduct traffic analysis and studies associated with improvements to any affected roadway.
4. Prepare preliminary through 90% design to include right-of-way, plans and specifications, and detailed construction level cost estimates for construction of the project, and improvements to the roadway.
5. Conduct activities included in preliminary engineering through 90% design such as:
Topographical surveys, metes and bounds surveys, geotechnical investigation, hydrologic analysis, utility engineering, hazardous materials assessments, architectural treatments, and estimates of the types and quantities of materials for 90% design of construction of the project and improvements to any affected roadway.
6. Coordinate with City, County, WSDOT and FTA or FHWA for potential modifications to adjacent roadways and state routes as a result of incorporating a new park and ride location or upgrading an existing location.
7. Provide visual renderings of potential streetscapes and facility development that may be used for presentations with MTA Board, WSDOT, and other stakeholders.

8. Produce technical memoranda to advise MTA Staff, attend and lead pertinent meetings as requested, produce easy to read graphics and maps as necessary, initiate contact with stakeholders, WSDOT, local jurisdictions, and other transit resources as appropriate.

Property & Right-of-Way Acquisition

This portion of work includes all support related to final appraisals and negotiations for acquiring or leasing any property necessary for the Park and Ride Development Project. It includes assisting with negotiations for the purchase of property (including obtaining required easements) related to any park and ride location. Work may include obtaining expert appraisal and valuation services and reports or other third-party services required to support acquisition.

Construction

This portion will include the support of all aspects of third party construction management activities from the bidding and procurement processes through project commissioning, acceptance and closeout.

END OF SECTION 3

Section 4: Proposal Content

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

In an effort to promote greater use of recycled and environmentally preferable products and minimize waste, all responses submitted should comply with the following guidelines:

- Original shall be printed single sided and all copies should be printed double sided.
- Respondents should submit materials in a format which allows for easy removal and recycling of paper materials.
- Unnecessary samples, attachments, or documents not specifically asked for should not be submitted.

4.1 Proposal Requirements

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

Proposals [one (1) original plus four (4) copies] must be submitted in accordance with requirements set forth in the RFQ NO LATER THAN 2:00 p.m., local time, March 4, 2016. Late proposals will not be accepted and will be returned to the respondent unopened.

Offeror must submit a “Technical Proposal” as a part of its Proposal package. This component shall be submitted in a separate sealed envelope/package, clearly identified on the exterior as “Technical Proposal” with the respective RFQ Name and due date.

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

1. Letter of Transmittal addressed to the Development Manager as follows:

Mason Transit Authority
Attn: Mike Oliver
790 E. Johns Prairie Road
Shelton, WA 98584

The letter of transmittal must include:

- Project title
 - Name of respondent
 - Location of the respondent
 - Brief description of respondent's proposal
 - Identify all professional members of respondent's team
 - A statement of validity pursuant to Section 3
 - A statement addressing potential conflicts
2. **Description of firm:** This part of the proposal should contain a brief, one page history of the firm, firm organization, number and type of personnel and the location of the firm's office. The respondent shall provide information demonstrating to MTA that it has the necessary financial resources to perform the contract in a satisfactory manner and within the specified time. Acceptable financial responsibility must be established by copies of audited financial statements, balance sheets, bank references, a recent submission to a recognized financial institution or similar document for each of the past three (3) years and other related financial information that the proposer deems relevant to the project.
 3. Provide in narrative format a summary of the firm's and proposed sub consultants' experience, including at least three (3) references of comparable projects (type, scale and scope). Include contact name, email address, telephone number and a brief description of the project. In addition, a statement is required from the respondent that submission of an executed proposal shall commit respondent's consent to discuss services provided on projects listed as a reference with respective contact persons. The summary should demonstrate knowledge and expertise in transit planning. Project summaries shall identify key staff which is also included in this SOQ. The proposed Project Manager must be included as a project manager or key staff on at least two of these projects.
 4. Provide a detailed description of the team's organizational framework for this project. Include clear identification of the principal or lead firm and sub consultants, project managers and key staff. Indicate tasks and/or disciplines of the leads and their roles and responsibilities. SOQs shall identify Disadvantaged Business Enterprise team members.
 5. For each key personnel, submit a resume focusing on relevant project experience. Include a minimum of two (2) project or professional references (which may include any of the five project references mentioned above). SOQs shall include a matrix showing the availability of key personnel to be assigned to this project, expressed in terms of percent of their time committed to other projects over the next 12 months.
 6. Combine the project reference(s) and indicate team members that have worked together on previous projects. Key personnel will be evaluated based on their past experience, qualifications and performance, availability and commitment to the project, as well as references.
 7. The submittal shall address the Scope of Work outlined in the RFQ and describe how the Proposer intends to carry out the tasks. A project schedule shall be provided outlining specific tasks to be performed, key milestone dates, and individuals responsible for each task. Describe

the Proposer's project management techniques for ensuring that the work is accomplished in accordance with established standards and schedules. Provide sufficient detail to convey to members of the Evaluation Committee, the firm's knowledge of the subjects and skills necessary for the completion of the contract and any other services necessary to complete the Project.

8. **Project Priority:** List any current or anticipated commitments or projects supervised by the proposed Project Manager for the next 36 months.

4.2 Anticipated Terms of Agreement

Please refer to the draft contract (Attachment D) to be executed with the successful consultant for specific contract language.

The following summary of additional terms and conditions of any agreement with a respondent is not intended to be exhaustive or definitive. Each contract term will be subject to negotiation. Mason Transit Authority has outlined its thoughts and concerns in order to have the respondents address these early in the proposal and evaluation process.

- **Consultants Staff:** Any changes in project leadership or key staff will require MTA written approval.
- **Representations and Warranties:** MTA will expect the respondent to make representations and warranties about its organization, the binding effect of the contract, financial condition, ability to undertake the project, and any other representations and/or warranties which MTA deems relevant to the contract.
- **Termination for Lack of Funding:** Termination for lack of funding will be without penalty. All costs generated or directed by the Consultant will cease the day the Consultant is notified of termination due to lack of funding.
- **Termination for project site environmental:** Any factors discovered during the project leading to disqualification of the Park and Ride Development site(s) as an option under NEPA, SEPA, WSDOT, FHWA, FTA, local jurisdiction or all additional State and Federal applicable guidelines, rules or regulations

It is unnecessary for respondents to sign and return the contract with the proposal; however, respondents should note applicable provisions relating to this RFQ contained therein and submit any proposed language changes no later than ten (10) calendar days prior to the proposal closing date.

END OF SECTION 4

Section 5: Evaluation of Proposals

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

Consultant qualifications will be evaluated by the Proposal Evaluation Committee based on the criteria below with a possible maximum score of 100 points for each Statement of Qualifications (SOQ). The top-scoring firms (not to exceed three) may be asked to make a presentation before the evaluation committee. In-person interviews will be used to revise scoring based on all information provided between the SOQs and the interview process in order to arrive at the most qualified firm.

The respondent selected for the award will be chosen on the basis of the greatest benefit to Mason Transit Authority (MTA). The evaluation committee will recommend a course of action to the MTA Board of Directors. The Board of Directors will be the final judge of which respondent offers the greatest benefit to MTA.

Submitted written proposals will be evaluated according to the following criteria and their respective weighted importance:

Criterion: Past Performance and Relevant Experience	Weight: 50
Considerations <ul style="list-style-type: none"> • Knowledge of and experience with the federal NEPA process and Washington State SEPA requirements • Experience working and coordinating with WSDOT and FTA or FHWA, on transit related projects on or adjacent to an interstate highway • Experience with the design of transit facilities, including the improvements associated with the transit operation along an interstate highway • Experience with the design and construction of pedestrian and ADA access • Experience conducting traffic and noise studies • Experience with right-of-way plans and negotiating with property owners • Experience in communicating to diverse stakeholders and conducting public meetings 	
Criterion: Key Personnel	Weight: 40
Considerations <ul style="list-style-type: none"> • The proven capability, successful past experience and characteristic of references of the Project Manager and key personnel on similar projects • Availability of key personnel identified over the next eight to 12 months • The ability of the consultants to augment key personnel in future phases of the project that may require different skill sets such as right-of-way and construction management 	
Criterion: Project Management and Coordination Experience	Weight: 10
Considerations <ul style="list-style-type: none"> • Clarity in defining key team member roles and responsibilities • Ability to manage and coordinate the work and establish and meet project milestones 	

5.1 Rejection of Proposals

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

END OF SECTION 5

Section 6: 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, MTA 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 MTA *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. MTA 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”, MTA 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, MTA 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 MTA harmless for any cost, penalties, and/or fees (including reasonable attorney fees) incurred in any action regarding the disclosure of said information. MTA 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 6

Section 7: General Provisions

These General Provisions are complementary to the Contract which is required to properly define and delineate the responsibilities and rights of the parties to this Contract.

7.1 Conflicts of Interest

Current and Former Employees: Mason Transit Authority seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former MTA employees in transactions with MTA. Consistent with this policy, no current or former MTA employee may contract with, influence, advocate, advise, or consult with a third party about a MTA transaction, or assist with preparation of bids submitted to MTA while employed by MTA or after leaving MTA’s employment, if he/she was substantially involved in determining the work to be done or process to be followed while a MTA employee.

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 MTA; a contractor’s objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage. MTA 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, MTA may prohibit the contractor and any of its subcontractors from participating in such related procurements/projects.

7.2 Debarment and Suspension

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

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

7.3 Defective Materials or Services

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

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

7.4 Subcontracts

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

The Contractor, at the request and direction of MTA, will provide copies of any written agreements showing their contractual relationship.

7.5 Insurance Requirements

The Contractor shall, at its sole cost and expense, obtain and maintain during the entire term of this Contract the minimum insurance set forth below. In the event the Contractor is a Joint Venture, these insurance requirements shall apply to each Joint Venture member separately. By requiring such minimum insurance, Mason Transit Authority shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including without limitation,

liability under the indemnity provisions of this Contract. Damages recoverable by Mason Transit Authority shall not be limited to the amount of the required insurance coverage.

- a. **General Liability:** Commercial General Liability for bodily injury including death, personal injury and property damage coverage, with contractual and completed operations endorsements, utilizing insurers and coverage forms acceptable to Mason Transit Authority, with a limit of at least \$1,000,000 per occurrence.
- b. **Automobile Liability:** Commercial Auto Liability coverage for bodily injury and property damage utilizing insurers and coverage forms acceptable to Mason Transit Authority, with a limit of at least \$1,000,000 per accident.
- c. **Professional Liability:** Whenever the work under this Contract includes "professional services," the Contractor shall maintain the appropriate Professional Liability insurance, affording limits of liability of \$1,000,000 per occurrence, for damages sustained by reason of or in the course of operations under the Contract whether occurring by reason of acts failing to meet the standard of care required by this Contract, negligent acts, or errors, or omissions of the Contractor.
- d. **Workers Compensation:** The Contractor and Subcontractor will secure its liability for industrial injury to its employees in accordance with the provisions of RCW Title 51. The Contractor and Subcontractor will be responsible for Workers Compensation insurance for any Subcontractor who provides services under subcontract. If the Contractor and Subcontractor are qualified as a self-insurer under Chapter 51.14 of the Revised Code of Washington, it will so certify to the Owner by submitting a letter signed by a corporate officer, indicating that it is a qualified self-insurer, and setting forth the limits of any policy of excess insurance covering its employees.
- e. **Reserved**
- f. **Certificates and Policies:** Prior to commencement of services for this Contract, the Contractor shall provide Mason Transit Authority with certificates of insurance showing insurance coverage in compliance with the above Paragraphs. All insurance coverage outlined above shall be written by insurance companies meeting Mason Transit Authority's financial security requirements, (A.M. Best's Key Rating A-; VII or higher). **Such certificates shall reference the title of this Contract** and will state that the Contractor shall provide thirty (30) calendar days advance written notice to Mason Transit Authority in the event the Contractor's insurance policies are cancelled, not renewed, or materially reduced in coverage. Should the Contractor neglect to obtain and maintain in force any of the insurance required in this Section, Mason Transit Authority may suspend or terminate this Contract. Suspension or termination of this Contract shall not relieve the Contractor from insurance obligations hereunder.
- g. **Additional Insured Endorsement:** General Liability Insurance and Builder's Risk Insurance must state that Mason Transit Authority 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 Mason Transit Authority as an additional insured.

The Contractor and its insurers shall endorse the required insurance policy (ies) to waive their right of subrogation against Mason Transit Authority. The Contractor and its insurers also waive their right of subrogation against Mason Transit Authority 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 Mason Transit Authority.

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.

7.6 Limitation of Liability

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

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

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

7.7 Taxes

Bid prices shall not include any allowance for Washington State Sales Tax or Federal Excise Tax **except on materials only**. Any State sales/use tax, import revenues, or other taxes, which are not or which may hereafter be imposed by Congress, a State, or any political subdivision hereof and applicable to the sale or material delivered as a result of this RFQ, and which by the terms of the tax law must be passed directly to MTA, will be paid by MTA from the Contractor's invoice.

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

7.8 Confidentiality

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

7.9 Contract Documents

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

7.10 Failure to Execute Contract

Should the awarded Contractor fail to execute the Contract within fifteen (15) days from the Final Award Notice date, MTA may withdraw the award and present the award to the next highest scoring Proposer. Should events give rise to this instance, the Proposer failing to execute a contract may be removed from MTA's bid list for any future contracting opportunities.

END OF SECTION 7

Section 8: Federal Contract Clauses

The Contractor shall certify to the best of its knowledge and belief, that it has read and understood the attached FTA Contract Clauses and Certifications as they pertain to project using Attachment A, 'Contractors Certification of Acknowledgment Federal Transit Administration Contract Clauses and Certifications FTA Master Agreement 21, October 1, 2014.

END OF SECTION 8

Section 9: Exhibits and Attachments

- Exhibit A:** Bidder's Affidavit
- Exhibit B:** Protest and Appeal Procedures
- Exhibit C:** Addenda Acknowledgement Form
- Exhibit D:** DBE & SBE Form

- Attachment A:** Federal Transit Administration Contract Clauses and Contractors Certification of Acknowledgment Federal Transit Administration Contract Clauses and Certifications FTA Master Agreement 21, October 1, 2014
- Attachment B:** No Bid Notice Form
- Attachment C:** Federal Certification Regarding Lobbying
- Attachment D:** Sample Contract
- Attachment E:** Project Description from original funding request

END OF SECTION 9

EXHIBIT A

BIDDERS AFFIDAVIT

BIDDER'S AFFIDAVIT PROJECT MTA #15-517

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 Mason Transit Authority and take immediate action to eliminate the conflict or to withdraw from said Contract as Mason Transit Authority may require.
2. No officer, employee, Board member, agent of Mason Transit Authority, 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 Mason Transit Authority 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 Mason Transit Authority 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 Bidder certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this Bid been convicted of, or had a civil judgment rendered against them for, commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or Contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph 2 above; and
4. Have not within a three (3) year period preceding this Bid had one or more public transactions (Federal, State or local) terminated for cause or default.

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 _____, 2015.

Notary Public in and for the State of _____,

residing in _____

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

EXHIBIT B

PROTEST AND APPEAL PROCEDURES

Mason Transit Authority has adopted the following Protest and Appeal Procedures to provide an internal review process available to prospective firms who respond to solicitations and to selected firms for the administration of resulting contracts.

If either prospective or actual consultants (herein referred to as "Consultants") believe they have been wronged by a specific action or decision by Mason Transit Authority in the award of or the administration of a contract, they are instructed to follow the procedures set forth below.

STEP ONE

Responders and/or Consultants may appeal or protest an award or action as soon as practical following the event but no later than five business days. The bases for the protest and appeal must be included at that time. All protests and appeals must be submitted in writing and be addressed to the Mason Transit Authority Development Manager. The Mason Transit Authority Development Manager will review any information provided and respond in writing within five business days following the receipt of the appeal or protest.

STEP TWO

In the event that a Consultant is not satisfied with the decision rendered by the Purchasing Coordinator, the Consultant shall have the right to appeal to the Finance Director and the Development Manager. The appeal of the Development Manager's decision must be received in the office of the Finance Director within five business days following receipt of the Development Manager's decision. The Finance Director will return a written decision to the consultant presenting the appeal within five business days of receiving the appeal or protest.

STEP THREE

A Consultant shall have the right to seek further remedy should the decision of the Finance Director not be acceptable to the Consultant. The Consultant shall provide a written appeal to the Manager within five business days of receiving the decision of the Finance Director. The Manager within five business days shall review, with legal counsel, the Consultant's written appeal and the Finance Director's written decision. The Manager will return a written decision to the Consultant presenting the appeal within five business days. The decision of the Manager is final.

STEP FOUR

In the case of a project involving Federal funds, the Consultant has the right to appeal the decision to the Federal Transit Administration. A full report of all proceedings will be forwarded to the Federal Transit Administration.

EXHIBIT C

**MASON TRANSIT AUTHORITY
REQUEST FOR QUALIFICATIONS
MTA PARK AND RIDE DEVELOPMENT
RFQ**

Proposal Addenda Acknowledgement

Receipt of Addenda number _____, _____, _____, is hereby acknowledged.

Proposer Company Name: _____

By: _____

Company Address:

Phone Number: (____) _____

EXHIBIT D

DBE BIDDERS LIST – DBE AND SBE PROJECT MTA PARK AND RIDE DEVELOPMENT

Federal Transit Administration (FTA)

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

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

Company Name: _____

Company Address: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

Authorized Signature: _____

Printed Name and Title: _____

Date Signed: _____

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

Yes No

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

Yes No

How long has your firm been in business? _____

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

- | | |
|----------------------------------------------------|----------------------------------------------------|
| <input type="checkbox"/> Less than \$500,000 | <input type="checkbox"/> \$3,000,001 - \$3,500,000 |
| <input type="checkbox"/> \$500,000 - \$1,000,000 | <input type="checkbox"/> \$3,500,001 - \$4,000,000 |
| <input type="checkbox"/> \$1,000,001 - \$1,500,000 | <input type="checkbox"/> \$4,000,001 - \$4,500,000 |
| <input type="checkbox"/> \$1,500,001 - \$2,000,000 | <input type="checkbox"/> \$4,500,001 - \$5,000,000 |
| <input type="checkbox"/> \$2,000,001 - \$2,500,000 | <input type="checkbox"/> \$5,000,001 - \$5,500,000 |
| <input type="checkbox"/> \$2,500,001 - \$3,000,000 | <input type="checkbox"/> Greater than \$5,500,000 |

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

Thank you very much!

****Optional Use Form****

ATTACHMENT A

FEDERAL TRANSIT ADMINISTRATION CONTRACT CLAUSES

I. 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.

II. 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.

III. 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.

IV. 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.

V. 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,
 - 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 21, 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,
- 3. Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document, and
- 4. 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. Sex,
 - e. Disability,
 - f. Age, or
 - g. National origin,
- 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
10. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and

(c) 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.

VI. 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.

VII. 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.

VIII. 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 (20), 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 (20), 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.

IX. 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.

X. 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,
- (5) **FTA Concurrence**. If a legal matter described in section XI.(2) and XI.(3) of this document involves the Project or the Recipient, FTA reserves the right to concur in any:
 - (a) Compromise, or
 - (b) Settlement, and
- (6) **Alternative Dispute Resolution**. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

XI. LOBBYING

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.

XII. CLEAN AIR & CLEAN WATER

The Recipient agrees to include adequate provisions in each third party agreement exceeding \$100,000 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 – 1377.

XIII. SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

To the extent required by Federal law, the State, as the Recipient, agrees to provide the following information about FTA funding for State Programs or Projects:

- (1) Types of Information. It will provide information including:
 - (a) Identification of FTA as the Federal agency providing the Federal funds for the Program or Project,
 - (b) The Catalog of Federal Domestic Assistance Number of the Program from which the Federal funding for the Program or Project is authorized, and
 - (c) The amount of Federal funds FTA has provided for the Program or Project, and
- (2) Documents. It will provide the information required by this provision in the following documents:
 - (a) Requests for proposals,
 - (b) Solicitations,
 - (c) Grant or cooperative agreement applications,
 - (d) Forms,
 - (e) Notifications,
 - (f) Press releases, and
 - (g) Other publications.

XIV. Seismic Safety

Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

FEDERAL CONTRACT CLAUSES AND CERTIFICATIONS MTA

Park and Ride Development Project

Federal Contract Clauses and Certifications: The Contractor shall certify to the best of its knowledge and belief, that it has or has not read and understood the attached FTA Contract Clauses and Certifications (**Attachment A**) as they pertain to the project using 'Contractors Certification of Acknowledgment Federal Transit Administration Contract Clauses and Certifications FTA Master Agreement 21, October 1, 2014'

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

Source: FTA Master Agreement (21), October 1, 2014
www.fta.dot.gov/documents/21-Master.pdf

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

A. **Has**_____ **Has not**_____ read and understood the attached Federal Transit Administration Contract Clauses as they pertain to project,_____ and;

B. **Has**_____ **Has not**_____ read and understood the attached Federal Transit Administration Contract Certifications as they pertain to project, _____

Signature of Contractor's Authorized Official

Date

Name & Title of Contractor's Authorized Official

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

Mason Transit Authority	790 E. Johns Prairie Road Shelton, WA 98584	Park and Ride Development Project
If your firm elects to not submit a response to this solicitation, please complete this form and return to: Mike Oliver, Development Manager		Design and Engineering Services

ATTACHMENT B
NO BID NOTICE FORM

NO BID NOTICE

A response to the solicitation is not being submitted for the following reason(s):

- | | |
|---------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> We do not provide the required goods or services | <input type="checkbox"/> Cannot meet delivery or response time requirements |
| <input type="checkbox"/> The project scope is too small | <input type="checkbox"/> Licensing restrictions (please explain below) |
| <input type="checkbox"/> The project scope is too large | <input type="checkbox"/> Insufficient time to prepare submittal |
| <input type="checkbox"/> Specifications are not sufficiently defined | <input type="checkbox"/> Cannot comply with contract terms and conditions (please specify below) |
| <input type="checkbox"/> Cannot handle due to present work load | <input type="checkbox"/> Other reasons (please explain below) |

I/We wish to respond to similar services in the future <input type="checkbox"/> Yes <input type="checkbox"/> No	Authorized Company Official – Signature and Title		Date
Do not write in this space	Firm Name		
	Address		
	City		
	State		Zip Code
Telephone Number			

ADDITIONAL REASONS / COMMENTS:

****Optional Use Form****
ATTACHMENT C

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, sub grants and contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Name of the Proposer's authorized official: _____

Title: _____

Signature

Date

THIS FORM MUST ACCOMPANY PROPOSAL

ATTACHMENT D

***SAMPLE
MASON TRANSIT
AUTHORITY***

**CONSULTANT
AGREEMENT**

DESIGN AND ENGINEERING SERVICES

**Mason Transit Authority Park and
Ride Development Project**

MASON TRANSIT AUTHORITY

790 E. Johns Prairie Rd
Shelton, Shelton, WA 98584
(360) 426-9434 Ext 110
moliver@masontransit.org

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MASON TRANSIT AUTHORITY

SAMPLE CONSULTANT AGREEMENT

THIS AGREEMENT, made and entered into in duplicate this ___ day of _____, 2016, by and between MASON TRANSIT AUTHORITY, a Washington municipal corporation, hereinafter referred to as "TRANSIT", and _____, hereinafter referred to as "CONSULTANT."

WITNESSETH:

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

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

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

ARTICLE 1 **OVERALL PROJECT**

1.1 RELATIONSHIP OF PARTIES

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

1.2 GENERAL SCOPE OF SERVICES

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

Exhibit X: Request for Qualification, Park and Ride Development Released: (Date)

Exhibit X: Addenda X, Park and Ride Development Released: (Date)

Exhibit X: Consultant's Response to RFQ Park and Ride Development Issued: (Date)

1.3 TERM OF THE AGREEMENT

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

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

ARTICLE 2
GENERAL PROVISION

2.1 ASSIGNMENT/SUBCONTRACTING

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

2.2 ATTORNEYS FEES AND COSTS

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

2.3 CHANGES

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

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

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

2.4 COMMUNICATIONS

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

2.5 DISPUTE RESOLUTION

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

2.6 JURISDICTION

- A. This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.
- B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Mason County, Washington.

2.7 RESERVED

2.8 MEDIATION

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

2.9 NOTICE

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

2.10 SEVERABILITY

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

2.11 TERMINATION

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

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

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

- B. **TERMINATION FOR DEFAULT:** TRANSIT may, by written notice of default to the CONSULTANT, terminate the whole or any part of this Agreement if the CONSULTANT fails to perform the services within the time specified herein or any extension thereof; or if the CONSULTANT fails to perform any of the provisions of the contract, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances does not cause such failure to be corrected within a period of ten (10) business days (or such longer period as TRANSIT may authorize in writing) after receipt of notice from TRANSIT specifying such failure.

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

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

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

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

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

2.12 TREATMENT OF ASSETS

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

ARTICLE 3

COMPENSATION, PAYMENTS AND RECORDS

3.1 ACCOUNTING RECORDS

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

3.2 AUDIT AND INSPECTION OF RECORDS

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

3.3 CHANGE ORDER PROCEDURE

- A. Oral change orders are not permitted. No change in this Agreement shall be made unless Mason Transit Authority's Project Manager (designated representative) gives his/her prior written approval thereto. The CONSULTANT shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the Agreement and signed by Mason Transit Authority's Capital Development Director.
- B. Exhibit (X) includes a firm fixed fee price and the schedule for the work to be performed. This proposal is accepted and may be modified by negotiations between the CONSULTANT and Mason Transit Authority's Project Manager. At that time, both parties shall execute a detailed modification in writing.

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

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

If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Agreement, whether changed or not changed by

any such order, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Any claim by the CONSULTANT for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the CONSULTANT of the notification of change; provided, however, that Mason Transit Authority's designated representative, if she or he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

3.4 COMPENSATION AND METHOD OF PAYMENT

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

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

3.5 OWNERSHIP OF DOCUMENTS

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

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

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

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

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

3.6 PATENT RIGHTS

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

3.7 INDEPENDENT CONSULTANT RELATIONSHIP

- A. The parties intend that an independent CONSULTANT/TRANSIT relationship will be created by this Agreement. TRANSIT is interested primarily in the results to be achieved; subject to the provisions herein, the implementation of services will lie solely with the discretion of CONSULTANT. No agent, employee, servant or representative of CONSULTANT shall be deemed to be an employee, agent, servant or representative of TRANSIT for any purpose, and the employees of CONSULTANT are not entitled to any of the benefits TRANSIT provides to its employees. CONSULTANT will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, sub consultants or representatives during the performance of this Agreement.
- B. In the performance of the services herein contemplated, CONSULTANT is an independent consultant with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of TRANSIT and shall be subject to TRANSIT's general rights of inspection and review to secure the satisfactory completion thereof.

3.8 WARRANTY OF TITLE

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

ARTICLE 4

TRANSIT PROVISIONS

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

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

4.2 INFORMATION

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

4.3 STATEMENT OF FINANCIAL ASSISTANCE

This Agreement is subject to receipt of financial assistance by TRANSIT from the Federal Transit Administration. TRANSIT shall arrange such assistance or other funding prior to authorizing the work of this Agreement to start. In the event the work of this Agreement is started and such financial assistance or other funding is not available, TRANSIT may terminate this Agreement in accordance with Article 2.14 Termination for Convenience.

4.4 TRANSIT'S DESIGNATED REPRESENTATIVE

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

ARTICLE 5

INSURANCE PROVISIONS

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

- 5.1** Worker's Compensation Insurance in compliance with the laws of the State of Washington covering all CONSULTANT's employees who perform under this Agreement.
- 5.2** **General Liability:** Commercial General Liability for bodily injury including death, personal injury and property damage coverage, with contractual and completed operations endorsements, utilizing insurers and coverage forms acceptable to Mason Transit Authority, with a limit of at least \$1,000,000 per occurrence.
- 5.3** **Automobile Liability:** Commercial Auto Liability coverage for bodily injury and property damage utilizing insurers and coverage forms acceptable to Mason Transit Authority, with a limit of at least \$1,000,000 per accident.
- 5.4** **Professional Liability:** Whenever the work under this Contract includes "professional services," the Contractor shall maintain the appropriate Professional Liability insurance, affording limits of liability of \$1,000,000 per occurrence, for damages sustained by reason of or in the course of operations under the Contract whether occurring by reason of acts failing to meet the standard of care required by this Contract, negligent acts, or errors, or omissions of the Contractor.

ARTICLE 6

SCHEDULE

6.1 SCHEDULE FOR THE WORK

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

6.2 NOTIFICATION OF DELAY

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

ARTICLE 7

LABOR PROVISIONS

7.1 SAFETY AND HEALTH STANDARDS

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

7.2 AMERICANS WITH DISABILITIES ACT

CONSULTANT shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 as amended by ADA Amendments Act of 2008 (ADA, 42 USC §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; section 16 of the Federal Transit Act, as amended, 49 USC app. § 1612; and the following regulations and any amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- (3) U.S. DOT regulations, "Americans with Disabilities Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;

- (4) Department of Justice regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- (5) Department of Justice regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- (6) General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- (7) Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," CFR Part 1630;
- (8) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and
- (9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.

7.3 DISADVANTAGED BUSINESS ENTERPRISES

A. In connection with the performance of this contract, CONSULTANT will cooperate with TRANSIT in meeting its aspirational goal with regard to the maximum utilization of disadvantaged businesses and will use good faith efforts to ensure that disadvantaged businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract. The agency's overall goal for DBE participation is 2.05 % for 2015.

B. Further, TRANSIT and CONSULTANT agree to ensure that disadvantaged businesses as defined in 49 CFR, Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, TRANSIT and CONSULTANT shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23, to ensure that disadvantaged businesses have the maximum opportunity to compete for and perform contracts. TRANSIT and CONSULTANT shall not discriminate on the basis of race, color, religion, national origin, sex, disability, or age, and in employment or business opportunity. CONSULTANT shall complete Contractor Good Faith Effort DBE Certification on the signing of this agreement **and again at its completion.**

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

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

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

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

7.4 NONDISCRIMINATION

- A. TRANSIT is an equal opportunity employer.
- B. NONDISCRIMINATION IN EMPLOYMENT. In the performance of this Agreement CONSULTANT will not discriminate against any employee or applicant for employment on the grounds of race, color, religion, national origin, sex, disability, age, the presence of any sensory, mental or physical disability and in employment or business opportunity; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular work involved. CONSULTANT shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, creed, color, national origin, sex, marital status, age, the presence of any sensory, mental or physical handicap, and in employment or business opportunity. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeships. CONSULTANT shall take such action with respect to this Agreement as may be required to ensure full compliance with Chapter 49.60 Revised Code of Washington, Law Against Discrimination, and Federal transit laws, specifically 49 U.S.C. 5332, as amended by MAP-21.
- C. NONDISCRIMINATION IN SERVICES. CONSULTANT will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, color, religion, national origin, sex, disability, age, the presence of any sensory, mental or physical disability and in employment or business opportunity.
- D. If any assignment and/or subcontracting has been authorized by TRANSIT, said assignment or subcontract shall include appropriate safeguards against discrimination. CONSULTANT shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein, and further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

7.5 TITLE VI COMPLIANCE

During the performance of this contract, CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. COMPLIANCE WITH REGULATIONS: CONSULTANT shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, CFR, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- B. NONDISCRIMINATION: CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub consultants, including procurements of materials and leases of equipment.
- C. SOLICITATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential sub consultant or supplier shall be notified by CONSULTANT of CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.
- D. INFORMATION AND REPORTS: The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by MASON TRANSIT AUTHORITY or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required or a CONSULTANT is in the exclusive possession of another who fails or refuses to

furnish this information, CONSULTANT shall so certify to MASON TRANSIT AUTHORITY, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

E. **SANCTIONS FOR NONCOMPLIANCE:** In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of the contract, MASON TRANSIT AUTHORITY shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

- (1) Withholding of payments to CONSULTANT under the contract until CONSULTANT complies, and/or
- (2) Cancellation, termination or suspension of the contract, in whole or in part.

The CONSULTANT shall include the provisions of subparagraphs (A) through (E) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurements as MASON TRANSIT AUTHORITY or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub consultant or supplier as a result of such direction CONSULTANT may request MASON TRANSIT AUTHORITY to enter into such litigation with all legal costs to be paid by CONSULTANT to protect the interest of MASON TRANSIT AUTHORITY, and, in addition, CONSULTANT may request the United States to enter into such litigation with all legal costs to be paid by CONSULTANT to protect the interests of the United States.

ARTICLE 8 **CONSULTANT PROVISIONS**

8.1 CONSULTANT RESPONSIBILITY FOR QUALITY

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

8.2 ANTI-KICKBACK PROVISION

This Agreement and all contracts or subcontracts for this project must comply with the Copeland Anti-Kickback Act (18 USC 874) as supplemental in the DOL regulations 29 CFR Part 3. This Act provides that each consultant or subconsultant shall be prohibited from including by any means any person employed in the construction, completion or repair of public work to give up any part of the compensation to which otherwise entitled.

8.3 COMPLIANCE WITH LAWS

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

8.4 DEBARRED BIDDERS

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

8.5 ENVIRONMENTAL VIOLATIONS

For all contracts and subcontracts in excess of \$100,000, CONSULTANT agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11378, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibit the use under nonexempt federal contracts, grants or loans, of facilities included on the EPA List for Violating Facilities. Consultant shall report violations to FTA and to the USEPA Assistant Administrator for Enforcement (ENO3299).

8.6 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference as identified at the website: (http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html). Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any MASON TRANSIT AUTHORITY requests, which would cause MASON TRANSIT AUTHORITY to be in violation of the FTA terms and conditions.

Not every requirement within FTA Circular 4220.1F as amended and attached CERTIFICATIONS will apply to every Agreement. The nature of the Agreement and the section of the statute or clause will determine which requirements apply. Requirements, which do not apply, will not be enforced. All Certifications, which are applicable, are to be signed and returned to TRANSIT with signed Agreement and made a part thereof.

8.7 FEDERAL CHANGES

CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA Master Agreement (21) dated October 1, 2014, as identified at the website <http://www.fta.dot.gov/documents/21-Master.pdf> between TRANSIT and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONSULTANT's failure to do comply shall constitute a material breach of this contract.

8.8 HOLD HARMLESS AND INDEMNIFICATION

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

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

8.9 INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS

No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom

8.10 LOBBYING RESTRICTIONS

CONSULTANT agrees to refrain from the support of lobbying and to comply with applicable requirement of 31 U.S.C. § 1352 and U.S. DOT regulations, "New Restriction on Lobbying," 49 C.F.R. Part 20, modified as necessary by section 10(b) of the Lobbying Disclosure Act of 1995 (which amend 31 U.S.C. § 1352). Completion of Lobbying Certification Required, CERTIFICATION II.

8.11 NO OBLIGATION BY THE FEDERAL GOVERNMENT

(1) The Consultant acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub consultant who will be subject to its provisions.

8.12 PAROL AGREEMENT

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

8.13 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

(1) The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing this Agreement the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make, or causes to be made, pertaining to the underlying contract or Federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Consultant to the extent the Federal Government deems appropriate.

(2) The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.

(3) The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the sub consultant who will be subject to the provisions.

8.14 PROHIBITED INTEREST

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

8.15 SEVERABILITY

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

8.16 SUCCESSORS

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

8.17 SURETIES

If at any time during the continuance of the Agreement, the sureties, or any of them, shall in the opinion of TRANSIT become untrustworthy, TRANSIT shall have the right to require additional and sufficient

sureties, which the CONSULTANT shall furnish to the satisfaction of TRANSIT within ten (10) days after notice.

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

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

MASON TRANSIT AUTHORITY

CONSULTANT

By: (SAMPLE DRAFT AGREEMENT)
Brad Patterson

By: (SAMPLE DRAFT AGREEMENT)

Its: General Manager

Its: Principal

Address: 790 E. Johns Prairie Road
Shelton, WA 98584

Address: _____
_____, WA _____

Date: _____

Date: _____

ATTACHMENT E

MTA Park and Ride Development Project (Description)

Mason Transit Authority – Capital Funding Request

Project: Park & Ride Development

October 6, 2014

42.5% of Mason County’s currently employed workers are working outside the county, and this number is increasing, resulting in a growing need for commuter-focused services. This project will provide assistance in establishing and implementing the enhancement and renovation of current designated Park & Ride lots and provide construction for three new locations for commuters. The project will increase the number of parking spaces from the current 154 to 506 when completed, adding 352 new spaces over four years (2015-2019). All lots will be served by MTA transit services.

MASON COUNTY PARK & RIDES¹

<u>Name</u>	<u>Owner</u>	<u>Status</u>	<u>Current</u>	<u>New</u>	<u>Total</u>
Belfair	MTA	New	0	100	100
Shelton Matlock	WSDOT	Enhanced	30	90	120
Cole Road	Mason County	Enhanced	29	N/A	29
Pear Orchard	City of Shelton	Informal Use	0 ²	20	20
Pickering Road	Mason County	Enhanced	33	42	75
Shelton Hills	MTA	New/Future	0	100	100

¹Not all Mason County Park and Ride Lots are reflected here

²Pear Orchard is a City of Shelton-owned lot with no improvements. It averages 12 cars per day parking.

Proposed Park & Ride Enhancement/Development

The enhancement or development proposed for each location depends on existing conditions and projected needs, and may include but not be limited to any or all of the following: Land acquisition, NEPA/SEPA, permitting, storm water mitigation, access, paving, building, bathrooms, septic, water, fencing, lighting, security, shelter, signage, striping, electric car charging station

- **Belfair:** New 100 spaces; MTA satellite staff office & bus storage; connected to Belfair Bypass
- **Cole Road:** Enhance security
- **Pear Orchard: New;** partnership with City of Shelton
- **Pickering Road:** Expand; enhance security
- **Shelton Hills:** New
- **Shelton- Matlock:** Expand; enhance security (City of Shelton Gateway project)

All projects consist of partnerships between various combinations of MTA, the City of Shelton, Mason County & WSDOT.

