



REQUEST FOR PROPOSALS

Professional Services

Transportation Options Program Assessment for City of Wilsonville

ADVERTISEMENT DATE: March 2, 2020

Address Proposals to:

City of Wilsonville
South Metro Area Regional Transit
Attn: Elli Work
29799 SW Town Center Loop East
Wilsonville, OR 97070

Proposals Due: March 20, 2020 by 4:00 pm, Pacific Time

Proposals must be sealed in an opaque envelope, plainly marked as follows: "Request for Proposals – Transportation Options Program Assessment," and sent to the attention of Elli Work. Include the name and address of the Proposer.

Proposals are to be submitted as four (4) printed copies and one (1) digital, electronic version on a USB thumb drive. Electronically mailed or faxed Proposals will not be accepted.

The City of Wilsonville reserves the right to reject any or all Proposals.

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Attachment 1 – Proposal Checklist

APPENDIX A - SAMPLE PROFESSIONAL SERVICES AGREEMENT

APPENDIX B - CERTIFICATION REGARDING LOBBYING

APPENDIX C - CERTIFICATION REGARDING CONSULTANT STATUS – SUSPENSION/DEBARMENT

Request for Proposals

The City of Wilsonville, Oregon (“City”) is requesting Proposals in order to select a qualified consultant to provide a program assessment for the City of Wilsonville (“Transportation Options Program Assessment”). Interested consultants (“Proposers”) are invited to demonstrate their experience and qualifications in performing work directly related to the services required by responding to this **Request for Proposals (RFP)**. This Project **does** does not involve federal funds.

I. Project Description

SMART is seeking a firm well versed in program assessment to provide an evaluation of the Transportation Options (TO) Program for the City of Wilsonville. This assessment will:

1. Provide a baseline overview of the existing TO Program, highlight current challenges, and detail opportunities for growth and improvement;
2. Conduct a TO Community Assessment to elicit program feedback/suggestions from residents, employers, and employees;
3. Create an action plan from which the program can quantify results moving forward; and
4. Conduct an end of TO Program project evaluation.

The Project will culminate in an evaluation of progress, starting from the established baseline to the end of the program in June 2022.

II. About SMART

The City of Wilsonville began providing transit service in 1989. That transit service is known today as SMART (South Metro Area Regional Transit). Over the past 25 years, the organization has grown from a small demand response system to a full service fixed-route system expanding to meet the transit needs of this growing suburban community.

The current SMART system consists of nine fixed-routes serving the community of Wilsonville and beyond, with an inter-modal connection to TriMet’s Westside Commuter Rail (WES) terminus, as well as connections to TriMet bus service in Portland and Tualatin, Canby Area Transit in Canby, and Cherriots in Salem.

SMART TO programs – the focus of this Project – connect people to transportation choices in an effort to reduce single occupancy vehicles (SOV) and greenhouse gas emissions. SMART Options provides information and resources to help people learn about their travel options for all types of trips. The program also helps employees find the best ways to get to work, whether by transit (bus or train), car/vanpooling, walking, bicycling, teleworking, car sharing, close-to-home commuting, park and rides, or creative work schedules.

Core TO components include:

- **SRTS Activities** – Transportation Demand Management Technician (TDM Tech) provides outreach to youth for active transportation safety and education.

- **Travel Training** – Travel training is provided to elderly people and people with disabilities of all ages, at no cost, through a partnership with Ride Connection.
- **Vanpool(s)** – A program to provide a vanpool to interested Wilsonville employers and their employees is currently “under construction.”
- **Emergency Ride Home Program** – The Emergency Ride Home Program (ERH) provides part or full-time employees of ERH-registered businesses who did not travel in their personal vehicle four (4) free emergency rides home a year in the event of an unexpected emergency or unscheduled overtime.
- **Transportation Fairs and Lunchtime Presentations** – SMART hosts information tables at businesses with 100 employees or more to provide transportation choices and information.
- **Trip Reduction Plan (TRP) and Survey Design/Analysis** – SMART facilitates an individualized TRP per business location with a strategy to reduce single occupancy trips made to the worksite. Employee Commute Options (ECO) is part of a state required plan of the DEQ to reduce smog levels. SMART assists companies in analyzing ECO data and writing a successful TRP.
- **SMART Art** – SMART fosters student creativity to show what transportation options look like in Wilsonville. The SMART Art Program works with Wilsonville public schools to link art, community collaboration, and transportation.
- **Walk Smart** – Started in 2002, Walk Smart is a free program that encourages participants to walk more and drive less for those short trips. A once monthly staff-led walking experience has evolved into weekly walks. Walks kick off on National Walk at Lunch Day, the last Wednesday of April, and run into October. Each Walk Wednesday begins at noon, with a brief pitch and give-away from the business sponsor, at various locations around town. For more information, go to ridesmart.com/walksmart.
- **Bike Smart** – A one-stop shop for information about bicycling in and around the Wilsonville area. Wilsonville offers the use of free covered bike storage at the Wilsonville Transit Center.
- **Individualized Marketing Campaigns** – Individualized marketing programs are education and outreach efforts that encourage voluntary travel behavior change. These programs differ from traditional mass marketing campaigns in that they are tailored to meet the travel needs of the individual.
- **Regional and National Programs** – SMART participates in and promotes Get There, the Street Trust, and Safe Routes to School to promote TO education and safety in the region.

The SMART TO Program conducts program marketing and outreach through tabling and speaking events; neighborhood websites, Facebook, and other social media; cinema and radio advertising; and print media such as newspapers, newsletters, posters, and brochures. Most marketing and outreach tools are in English and Spanish. For more information, visit ridesmart.com.

III. Project Goals

SMART’s TO Program is partially funded by Metro. As such, SMART uses Metro’s Multiple Account Evaluation (MAE) Framework for measurable benefits and outcomes. Of the five “accounts” in the MAE Framework, SMART chooses to focus on three: **Equity, Efficiency, and Engagement**. The MAE Framework can be found at oregonmetro.gov.

This Project will inform the possible development of new programming and improve the effectiveness of the current program. The program's purpose is the lens through which all decisions are made: increase TO program reach, effectiveness, and participation; reduce vehicle miles traveled (VMT), single occupancy vehicles (SOV), traffic congestion, and greenhouse gas emissions; and increase the economic well-being and overall health of the community.

For the purpose of this Project, goals and associated tasks are:

Goal #1: Assess the Current TO Program

Task 1: Identify where the program has gaps in service, challenges/barriers to participation, inadequate data collection, etc.

Task 2: Specifically evaluate where communities of color, the LGBTQ community, and other marginalized groups are involved or excluded.

Task 3: Provide recommendations for improvement and growth that will increase program effectiveness in reducing Single Occupancy Vehicles (SOV).

Goal #2: Conduct a Community TO Assessment

Task 1: Provide public outreach in the form of community meetings, focus groups, one-on-one interviews, surveys, etc.

Task 2: Engage communities of color, the LGBTQ community, low-income families, and other marginalized groups in leadership roles in performing the TO assessment.

Task 3: Provide data and recommendations to inform strategic planning, priority setting, program outcomes, and program improvements.

Goal #3: Create a TO baseline

Task 1: Create a baseline from which the program can quantify progress moving forward.

Goal #4: Produce an End Project Evaluation

Task 1: Analyze data collection, i.e., quarterly reports to Metro, and conduct staff interviews.

Task 2: Produce an end of project report summarizing the growth and remaining challenges of the TO Program.

Task 3: Make final recommendations.

IV. Minimum Qualifications

SMART is seeking a consultant that is highly regarded in the field, understands and appreciates SMART's system/business needs, and has qualified and established project management staff. To be considered for this Project, each Proposer must demonstrate the following minimum criteria as part of its Proposal:

- Proposer must demonstrate a minimum of five (5) years' experience providing the types of services described in the Scope of Work (see **Exhibit A to the Professional Services Agreement - Appendix A**) for public agencies;
- Proposer must demonstrate strong public engagement experience with a focus on new and/or modern communication techniques;

- Proposer must have extensive consulting experience with a solid background/understanding of the transit industry; and
- Proposer must provide at least three (3) public agency references where Proposer provided similar services as the services stated in the Scope of Work (**Exhibit A to Professional Services Agreement - Appendix A**).

Each Proposer shall submit with its Proposal a current Dun & Bradstreet financial statement or written statement from the owner or chief financial officer, certifying that the firm has adequate funds to support and complete this Project.

V. Scope of Work

Based on the Goals listed in **Section III** above, deliverables for all materials and reports will be produced and presented in a high quality, timely, and professional manner. Deliverables will include:

1. A TO Program evaluation to include recommendations for improvement and growth that will increase program participation and effectiveness.
2. A TO Community Assessment Report that includes a summary of survey findings and how community members from marginalized groups were engaged in a leadership role.
3. Establish a clear baseline, with details explaining consultant's methodology.
4. A final evaluation report with recommendations for the program moving forward.

See the Scope of Work (**Exhibit A to Professional Services Agreement - Appendix A**), for additional information.

VI. RFP Documents

Request for Proposal (RFP) documents may be obtained electronically on the City's website at <https://www.ci.wilsonville.or.us/rfps>. Contact Program Manager Elli Work at work@ridesmart.com to obtain RFP documents by mail. The City of Wilsonville shall not be held responsible for the delivery of documents.

VII. Project Manager

The City's Grants and Programs Manager shall be the sole point of contact for all questions, concerns, and protests. The Project Manager for this Project is:

Elli Work, Grants and Programs Manager

Telephone: (503) 682-4523

work@ridesmart.com

VIII. RFP Questions

Interested consultants shall direct all questions regarding RFP documents by email to:

Elli Work

work@ridesmart.com

All questions shall include "RFP Questions – TO Program Assessment" in the subject line and must be submitted by **4:00 p.m., Pacific Time, on March 13, 2020**. Questions and answers will be provided by email to all firms on the RFP holder's list.

Access to the City's Project Manager for telephone calls, emails, or other communication will be unrestricted during the RFP preparation period, up until March 13, 2020. During this time, Proposers are encouraged to ask as many questions as needed to prepare a viable Proposal.

For the sake of fairness, Proposers are not to contact any City staff or official other than the Project Manager concerning this RFP. Contact with any other City staff or official concerning this RFP will be grounds for disqualification.

Proposers are hereby notified that verbal communication may not be relied upon as official communication concerning the RFP. Only answers to those questions responded to by the Project Manager via email or posted on the website may be relied upon. Proposers should check the City's website frequently (www.ci.wilsonville.or.us) for any addenda to the RFP.

IX. Proposal Requirements

Interested consultants shall prepare and submit Proposals in accordance with the requirements stated within this RFP. Adherence to these requirements will ensure a fair and objective analysis of submitted Proposals. Proposals should provide a clear, concise description of the Proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be placed on completeness, brevity, and clarity of content. Failure to comply with or complete any part of the RFP may result in rejection of the Proposal. The ability to follow these instructions demonstrates attention to detail.

Proposal Format

Proposals shall be typewritten, with a standard body text font (e.g., Calibri, Times New Roman, Garamond) of at least 12-point. Proposals shall be preferably double-sided and stapled once or bound in the upper left-hand corner. The City requests that submittal materials contain post-consumer recycled content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled, such as PVC binders, spiral bindings, and plastic or glossy covers or dividers. One page is a single 8 ½" x 11" sheet of paper, printed on both sides. Please number pages consecutively in the lower right-hand corner, after the table of contents.

Proposals shall be organized in accordance with the listed Proposal contents and shall not exceed 10 double-sided pages. Supporting Information, as defined below, shall be provided in a separate section at the end of the Proposal, and not counted in the page limit requirements. A front cover sheet, introductory letter, and table of contents are not counted in the page limit requirement.

Proposals shall be organized in the order listed in this "Proposal Requirements" section and shall not exceed ten double-sided pages. While double-spaced narratives are not required, the liberal use of white space is appreciated for ease of reading.

Proposals exceeding the specified number of pages or text font size may be considered non-responsive and the Proposal may be rejected.

Introductory Letter

The introductory letter should address the consultant's willingness and commitment, if selected, to provide the services offered and a description of why the Proposer believes it should be selected.

The letter shall be addressed to the City's Project Manager and include the name of the firm, as well as the printed name, title, telephone number, and email address of the officer authorized to represent the consultant in any correspondence, negotiations, and signing of any contract that may result. Include the address of the office that will be providing the service and the project manager's name, title, telephone number, and e-mail address. The Proposer's federal and state tax ID numbers and the state of incorporation, if applicable, shall also be included. The letter must be signed by the Proposer, if an individual, or by a legal representative of the Proposer's entity authorized to bind the entity in contractual matters.

The letter of interest shall specifically stipulate the following statements:

"Proposer has received and examined, as part of the Proposal, Addenda No. ____ through ____ . Proposer accepts all terms and conditions contained in the Request for Proposal and the Professional Services Agreement, except as otherwise specifically noted in the Proposal."

"The submitted Proposal is valid for a period of ninety (90) days from the time and date Proposals are due."

"All materials and documents acquired or produced by the consultant in conjunction with the resulting contract shall be delivered to and become property of the City of Wilsonville, without restriction or limitation of future use."

Please see **Attachment 1**, Proposal Checklist.

Project Understanding

Proposals shall demonstrate the consultant's understanding of the Project by providing a clear and concise description of the Project, discussion of the anticipated primary issues and milestones, and identification of key stakeholders, based on the information provided in the RFP.

Project Approach

Proposals shall clearly define the tasks and activities necessary to meet the objectives outlined in the Scope of Work of the RFP. Each Proposer should demonstrate knowledge of the type of work requested, ability to solve the anticipated Project issues, and ability to offer innovative ideas. Proposer's ability to expeditiously complete the work should be made evident. The Proposal should include the following:

1. Describe overall approach to project management.

2. Describe Proposer's approach and methodology for preparing project cost estimates, including the services being solicited by the RFP, as well as the cost of permits, acquisitions, and construction.
3. Describe approach to organize and accomplish each of the tasks and activities of this RFP, including addressing the anticipated primary issues and milestones.
4. Identify Proposer's specific team members, including key sub-consultants, and resources assigned to each task and activity of the RFP.
5. Describe Proposer's approach to complete the tasks and activities of this RFP in a timely manner and control costs.
6. Describe Proposer's approach to unanticipated issues that may arise during the Project.
7. Describe Proposer's quality assurance and quality control procedures to be implemented on this Project.
8. Describe Proposer's approach and abilities to interact and engage stakeholders.
9. Identify and describe the deliverables that will result from each task and activity.
10. Identify key points of input and review with City staff.

Proposer Experience

Proposals shall provide a brief work history of consultant's and any key sub-consultant's projects entailing the same type of work being requested. Emphasis should be placed on local projects for public agencies where possible. The Proposal should include the following:

1. Describe the consultant's and key sub-consultant's firm size, office locations, and relevant capabilities and resources to be utilized on this Project.
2. Describe consultant and key sub-consultants' work experience that corresponds with the Project needs, as identified in this RFP.
3. Address SMART's high level of expectations regarding:
 - Product quality;
 - Need for consultant flexibility and accessibility;
 - Efficiency and understanding of the limitations of taxpayer funded programs;
 - Budget management expertise;
 - Unique qualities of public agency; and
 - Timely turnarounds.
4. Explain in-house multi-lingual outreach capabilities and list all anticipated subcontractors, equipment needs, and sources.
5. Detail in 2-4 examples your past experience working on a program evaluation and community assessment with positive outcomes.
6. Provide at least three (3) examples of projects completed by Proposer for public agencies within the last five (5) years that best characterize Proposer's experience with the work being requested, work quality, and cost control, describing each by project name, type, location, and date.

- Include the public agency name and the name, address, telephone number, and email of the current contact person for each project, where possible.
- Identify what role, if any, each team member who is proposed for this City Project (see Project Team Experience, below) played in each listed project.
- Identify original and final contract costs for each listed project. Explain any cost overruns and corrective actions taken.

Project Team Experience

Proposals shall identify the team to be assigned to the Project by name, describing each member’s qualifications and experience with completed projects relative to the requested services, including expertise regarding all tasks associated with the Scope of Work. Each Proposal should include the following:

1. Identify by name and title the project principal, project manager, key supporting personnel, and any sub-consultants or subcontractors to be assigned to this Project.
2. Describe education, training, qualifications, registrations, certification, and relevant individual work experience of all key personnel, including sub-consultants, to be assigned to this Project.
3. Identify the Project roles and responsibilities of all key personnel.
4. Describe any attributes or expertise of key personnel uniquely situated for the requested services.
5. Describe the extent of principal and project manager involvement.
6. Describe current and anticipated assignments and location of key personnel, including percentage of time devoted to other projects during performance of this Project.
7. Estimate the percentage of time each listed key personnel will be devoted to this Project for the duration of the Project, based on a 40-hour work week.

Project Cost (2 page limit)

The anticipated budget for this Project is \$80,000. Cost is, therefore, a very important consideration of the Proposal evaluation. The City seeks two specific cost-related elements from each Proposer:

- A spreadsheet (example follows) of the fully loaded billing rates of each member of the Project. In addition to key staff, please include administrative support and/or sub-consultants that may work on the Project.

Name of Primary Consultant		
Team Member	Role	Rate/hour
Jane Doe	Project Manager (PM)	\$
Marvin Garden	Outreach Specialist – I (OS-1)	\$
Handy Right	Administrative Assistant (AA)	\$
Name of Sub-consultant		
Team Member	Role	Rate/hour
John Hancock	Focus Group Facilitator (FG)	\$

- A spreadsheet that outlines the tasks and cost associated with the first component. The format (example follows) should include the tasks you believe are necessary to complete the four goals of this Project; timeline completion for each task associated with the goals; and personnel hours and associated costs for each task.

Goals • And associated task(s)	Staff Hours by Task				Timeline	Total Hours	Total Cost
	PM	OS-1	AA	FG	Estimated Timeline		
1. Assess TO Program •							
2. TO Community Assessment •							
3. Baseline •							
4. Final Evaluation •							
Total Hours & Cost							

Estimated Timeline

Include in the graph above the estimated timeline to complete the Project goals and tasks. For example, the Community Assessment may occur May to June 2020 and the Baseline provided in July 2020. There will be a break in vendor activities from the Baseline to the Final Evaluation activities. The Program ends June 30, 2022, and the final evaluation is due to Metro July 31, 2022. *The selected consultant’s agreement will end June 30, 2022.*

Supporting Information

Supporting materials may include graphs, full resumes, other references, charts, sample documents, and photos. However, pertinent information should be covered in the body of the Proposal. Supporting Information will not count toward the page limit, but brevity is encouraged. If there is no additional information to present in the Supporting Information, then state: *“There is no additional information we wish to present.”*

Exceptions to the Contract

Please outline if you have any exceptions to the contract or insurance requirements, as outlined in the sample Professional Services Agreement attached hereto as **Appendix A**. These exceptions will become an important part of the final contract negotiations.

Required Forms

Any required forms must be signed and returned with your response.

X. Proposal Submission

Proposers must submit four (4) printed copies of their written Proposals and one (1) digital, electronic version on a USB thumb drive. Proposals shall be delivered in sealed opaque envelopes,

plainly marked "Request for Proposals – Transportation Options Program Assessment for City of Wilsonville," and include the name and address of the Proposer. Proposals shall be addressed and submitted to City Hall by **4:00 p.m., Pacific Time, on the 20th day of March 2020:**

City of Wilsonville
Attn: Elli Work, Grants & Programs Manager
29799 SW Town Center Loop E,
Wilsonville, OR 97070

Proposals must arrive at the issuing office on or before the listed time and date due. Late Proposals will be returned unopened and without review. Electronically mailed or faxed Proposals will not be accepted.

XI. Schedule

The following is the anticipated timeline for receiving and evaluating Proposals and awarding a contract to the most qualified firm or individual. This schedule is subject to change as additional time is needed.

Advertise Request for Proposals	March 2, 2020
RFP Change Request Deadline	March 13, 2020, 4:00 p.m.
RFP Question Submission Deadline	March 13, 2020, 4:00 p.m.
Addenda Issuance Deadline	March 17, 2020
Proposals Due	March 20, 2020, 4:00 p.m.
Evaluation of Proposals Complete	March 27, 2020
Interviews Scheduled (if needed)	March 31, 2020 (if needed)
Notice of Award	April 3, 2020

XII. Proposal Evaluation and Selection

A Selection Review Committee of at least three members will be appointed to evaluate the Proposals received. Each committee member will evaluate each Proposal in accordance with the criteria stated in the "Proposal Requirements" section of this RFP.

The City may also seek expert advice to help review Proposals. Advisors to the Selection Review Committee may attend evaluation meetings and consultant presentations, evaluate the Proposals, and lend any such expertise to the process as requested by the City. However, any such person that is contacted by the City for their expert advice shall not, from first being contacted until the RFP process is completed or otherwise brought to an end, have communications with any Proposers regarding Proposals or the RFP process.

At any point during the evaluation process, the City is permitted to seek clarification of any Proposal.

Written Evaluation

Based on his or her evaluation, each member of the Selection Review Committee will score each Proposal according to the following scoring criteria. Each member will rank, in descending order, each Proposal by total score.

WRITTEN PROPOSAL EVALUATION CRITERIA

<i>Criteria</i>	<i>Maximum Score</i>
Proposal Quality	25
Proposer Experience	25
Qualifications of Personnel	25
Project Cost (cannot exceed budget)	25
<hr/>	
Total	100 Points

Interview Evaluation

If determined to be necessary or desirable, finalists from the written evaluation will be invited to participate in an additional interview evaluation process. The number of finalists will be determined by the Selection Review Committee. The interview evaluation process will provide an opportunity for Proposers to make a presentation to clarify their Proposal and for the Selection Review Committee to ask additional questions related to the Proposal and Scope of Work. The City will notify finalists of the interview evaluation time and location and allow for a reasonable period of time for finalists to prepare presentations.

If an interview is scheduled, the finalists will be provided with the interview evaluation criteria with the notification of their selection.

Successful Proposer Determination

Written Proposals shall be evaluated, but no final decision will be made until one or more firms are interviewed. The finalists for the interview evaluation shall be selected from those Proposals with the highest Written Proposal Evaluation Score.

Where the interview evaluation process has been implemented, determination of the successful Proposer will be based on the interview evaluation and written Proposal scoring, with price remaining a primary factor for consideration, as required by federal law.

The Selection Review Committee shall determine the final ranking of Proposers, and the Committee's decision is final. Upon determination of the successful Proposer, the City will issue a Notice of Intent to Award letter, notifying all Proposers of the RFP process having concluded, the City's selection of the successful Proposer, and protest procedures.

The City reserves the right to negotiate a final contract that is in the best interest of the City. With regard to the Professional Services Agreement, the City will only negotiate those provisions that were noted as exceptions in the Proposal. The City will attempt to reach a final agreement with the successful Proposer but may, in its sole discretion, terminate negotiations and reject the Proposal in the event a record of substandard workmanship is determined or agreement cannot be reached. The City may then attempt to reach final agreement with the next highest ranked

Proposer, and so on with the remaining Proposers, until an agreement is reached. In the alternative, the City may at any time elect to reject all Proposals and begin the RFP process over.

After the City has reached final agreement with the Proposer, the Selection Review Committee will make a recommendation to the Wilsonville City Manager. The City Manager will then make the final contract award decision.

Award Protest

A Proposer believing to have been adversely affected or aggrieved by the selection of the successful Proposer may submit a protest to the City in accordance with OAR 137-047-0740. The protest must be in writing and submitted to:

City of Wilsonville
Attn: Elli Work
29799 SW Town Center Loop East
Wilsonville, OR 97070

or by email to:

work@ridesmart.com

Award protests shall include "SMART TO Program Assessment – Award Protest" in the subject line or written on the front of the envelope. The written protest must be received by the City no later than seven (7) calendar days after the date the Notice of Intent to Award letter was issued. The protest should demonstrate that all higher ranked Proposers failed to meet the requirements of the RFP or are not qualified to perform the services described in the RFP. Protests received after the submittal deadline will not be considered.

No contract associated with the RFP will be awarded until any protests have been resolved. The City will evaluate and resolve all award protests submitted before the deadline within a reasonable time following receipt of the protest. The City will promptly issue a written decision on the protest to the Proposer who submitted the protest. If the City's written decision on the protest results in a change to the RFP, the City will cancel the Notice of Intent to Award, revise the RFP documents accordingly, and solicit for new Proposals. The City's decision regarding the protest is final and concludes the administrative appeals process.

City's Reservation of Rights

The City reserves the right to waive minor irregularities or omissions in compliance with the requirements of this RFP to the extent the Selection Committee and Project Manager determine it is in the best interest of the City to do so. The City also reserves the right to cancel this RFP at any time if it determines it is in the best interest of the City to do so. Proposers therefore, by proposing, agree that doing so is at their own risk and the City shall have no liability related thereto.

XIII. General RFP Information

Changes to the RFP Solicitation by Addenda

The City reserves the right to make changes to the RFP by written addendum, which shall be issued by email to all those who have obtained the RFP documents by pick-up or standard mail, and will be made available for download at www.ci.wilsonville.or.us under "Doing Business."

No addenda will be issued later than **March 17, 2020**, except by an addendum, if necessary, postponing the date for receipt of Proposals or withdrawing the RFP altogether. All addenda shall have the same binding effect as though contained in the main body of the RFP Scope of Work.

Each Proposer is responsible for obtaining all addenda prior to submitting a Proposal and shall acknowledge in the Proposal receipt of each addendum as part of the Proposal. Failure to acknowledge receipt of all addenda as part of the Proposal may result in rejection of the Proposal.

Confidentiality

All information submitted by Proposers shall become and remain the property of the City and, as such, is considered public information and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the Proposals for which Proposer requests exception from disclosure as being proprietary information exempt from disclosure, consistent with Oregon law. If a Proposal contains any information that is considered a trade secret under ORS 192.501(2), each sheet of such information must be marked with the following legend:

"This data constitutes a trade secret and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."

Identifying the Proposal, in whole, as a trade secret is not acceptable. Failure to identify a portion of the Proposal as a trade secret shall be deemed a waiver of any future claim of that information as a trade secret. Nondisclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determinations made pursuant to the Oregon Public Records Law.

The City will make available to any person requesting information, through the City processes for disclosure of public records, any and all information submitted as a result of this RFP not exempted from disclosure, without obtaining permission from any Proposer to do so after the Notice of Intent to Award has been released.

The City accepts no liability for the inadvertent or unavoidable release of any confidential information submitted. If a public record request is made for material marked as proprietary, the City will attempt to notify the impacted Proposer prior to the deadline for release of the material, but will not defend against any legal challenge for release. Therefore, claims arising out of any public record request for such information shall be at the Proposer's sole expense, if the Proposer wishes to deny or withhold the information.

Cancellation

The City reserves the right to cancel this RFP or the contract award at any time before execution of the contract by both parties, if cancellation is deemed to be in the City's best interest. In no event shall the City have any liability for the cancellation of a contract award.

Late Proposals

All Proposals that are not received by the Proposal Due Date will not be considered and will be returned unopened to the Proposer. Electronically mailed or faxed Proposals will not be accepted. Delays due to mail and/or delivery handling, including but not limited to delays within the City's internal distribution systems, do not excuse the Proposer's responsibility for submitting the Proposal to the correct location by the Proposal Due Date.

Disputes

In case of any doubt or differences of opinion as to the items or services to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the City shall be final and binding upon all parties.

Proposer Certifications

By the act of submitting a Proposal in response to this RFP, the Proposer certifies that:

1. Proposer has carefully examined all RFP documents, including the sample **Professional Services Agreement (see Appendix A)**, all addenda, and all other attachments, fully understands the RFP intent, is able to perform all tasks as described in the Scope of Work of this RFP, and its Proposal is made in accordance therewith. Except as otherwise noted as part of the Proposal, Proposer certifies that Proposer is ready, willing, and able to comply with all terms of the attached Professional Services Agreement.
2. Proposer is familiar with the local conditions under which the work will be performed.
3. The Proposal is based upon the requirements described in the RFP, without exception, unless clearly stated in the response.
4. Proposer accepts all of the terms of the City's Professional Services Agreement and warrants that Proposer will fully meet all of the insurance requirements contained therein. If Proposer wishes to amend or modify any terms of the Professional Services Agreement, such amendment or modification must be stated in particularity in the Proposal. Proposed changes not stated in the Proposal will not be considered at the time of contract award. Changes stated will be considered, but may not be agreed upon by the City for contract award. If the City does not agree with such noted changes, Proposer may withdraw the Proposal and the City may elect to award the contract to the next highest ranked Proposer.
5. Proposer certifies, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of Proposer's knowledge and belief, no elected official, employee, or person whose salary is payable, in whole or in part, by the City has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof, other than as fully described in the Proposer's response to this solicitation.
6. Proposer has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and if its Proposal is accepted, the Proposer shall accept the contract documents thereto, unless substantive changes are made in same without the approval of the Proposer.

7. Proposer, if an individual, is of lawful age, is the only one interested in this Proposal, and no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.
8. Proposer has quality experience providing the types of services and duties as described within the Scope of Work of this RFP.

Proposer shall also certify Proposer's state of residence.

Nondiscrimination

By the act of submitting a Proposal in response to this RFP, the Proposer certifies, under penalty of perjury, that ***the Proposer has not discriminated against minorities, women, emerging small business enterprises, or a business enterprise that is owned or controlled by, or that employs, a disabled veteran in obtaining any required subcontracts.***

Competition

Prospective Proposers are encouraged to comment, either with their Proposals or at any other time, in writing, on any specification or requirement within this RFP which the Proposer believes will inordinately limit competition.

RFP Protests and Change Requests

Because any contract awarded based on this RFP will be for less than \$100,000, no formal protest procedure is required. Proposers are, however, welcome to and encouraged to submit, in writing, questions or suggestions for changes or clarifications before the question submission deadline of **March 13, 2020 at 4:00 p.m., Pacific Time**. All change requests shall include "Transportation Options Program Assessment – RFP Change Request" and must be submitted to:

City of Wilsonville
Attn: Elli Work
29799 SW Town Center Loop East
Wilsonville, OR 97070

or by email to:

work@ridesmart.com

Proposal Liability

Proposers responding to this RFP do so solely at their expense, and the City is not responsible for any Proposer expenses associated with the RFP. By proposing, Proposers agree that doing so is at their own risk and the City shall have no liability related thereto. Finalists invited to participate in interview evaluations are responsible for scheduling and paying for their own travel arrangements. The City is not liable for any cost incurred by a Proposer in protesting any portion of the RFP documents or the City's selection decision.

City Requests for Clarification, Additional Research, and Revisions

The City reserves the right to obtain clarification of any portion of a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to timely respond to such a request for additional information or clarification may result in a finding that the Proposer is non-responsive and consequent rejection of the Proposal.

The City may obtain information from any legal source for clarification of any Proposal. The City need not inform the Proposer of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of any Proposer. Information may include, but shall not necessarily be limited to, current litigation and contracting references. All such documents, if requested by the City, become part of the public record and may be disclosed accordingly.

The City reserves the right to request revisions of any Proposal after the date and time due and before award for the purpose of obtaining best and final offers.

Rejection of Proposals

The City reserves the right to reject any or all irregularities in Proposals submitted in response to this RFP. Furthermore, the City reserves the right to reject any or all Proposals, or portions thereof, submitted in response to this RFP. Proposals may be rejected for one or more of the following reasons, including but not limited to:

1. Failure of the Proposer to adhere to one or more of the provisions established in the RFP.
2. Failure of the Proposer to submit a Proposal in the format specified herein.
3. Failure of the Proposer to submit a Proposal within the time requirements established herein.
4. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the Proposal process.
5. Failure to provide information that is specifically requested in this RFP.

The City may reject any Proposal not in compliance with all prescribed public procurement procedures and requirements, and may reject for good cause any or all Proposals upon a finding by the City that it is in the public interest to do so.

Modification or Withdrawal of Proposal by Proposer

A Proposal may not be modified, withdrawn, or canceled by the Proposer following the time and date the Proposals are due. Proposals submitted early may be modified or withdrawn only by notice to the City, at the Proposal submittal location, prior to the time and date the Proposals are due. Such notice shall be submitted to the Project Manager, in writing, executed and signed by a duly authorized representative of the firm/individual submitting the Proposal. All such communication shall be worded so as not to reveal the contents of the original Proposal.

Withdrawn Proposals may be resubmitted prior to the time and date the Proposals are due, provided that they are then fully in conformance with the RFP.

Duration of Proposal

Proposal prices, terms, and conditions shall be firm for a period of at least ninety (90) days from the time and date Proposals are due. Proposals shall not be subject to future price escalation or changes of terms during the ninety (90) day period.

Local and Federal Requirements

The City of Wilsonville intends to select a consultant in accordance with OAR 137-047-0260 and the City's municipal code. Selection of a consultant under this process is not a guarantee of a contract award, nor is the award of a contract for any portion of the Work a guarantee of award of a contract for any subsequent work. All work is subject to budgetary and funding constraints of the City of Wilsonville.

The selected consultant shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under this contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

The selected consultant is subject to the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires the provision of Workers Compensation coverage for all employees working under this contract. The City of Wilsonville's programs, services, employment opportunities, and volunteer positions are open to all persons without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age, marital status, disability, or political affiliation.

XIV. Federally Mandated Contract Provisions; Contract Modifications

This contract, if awarded, will be funded in whole or in part with federal funds and, thus, certain federal contracting provisions must apply to this contract. Attached as **Appendix A** is the Professional Services Agreement that will be awarded to the successful Proposer. Special attention should be paid to Section 12 of the Agreement, which contains the required federal provisions, as mandated by law. None of these provisions may be waived or modified.

Proposer should also pay close attention to Section 13 of the Agreement, which deals with Insurance and Indemnity. The insurance amounts listed are minimum requirements and will not be reduced. Any other exceptions or proposed modifications to the Agreement will be considered, but not necessarily agreed to. If Proposer wishes to modify any portion of the Agreement, other than Sections 12 and 13, which are not subject to modification, Proposer must include a specific reference to the Section that Proposer would like to modify, providing the reasons therefor and proposed alternative language. Any changes to the Agreement not raised in the Proposal will not be considered, excepting mutually agreed upon additions, deletions, or revisions to the Scope of Work made at the time of contract award.

Pursuant to Section 12.4 of the required federal provisions, each Proposer must submit a **Certification Regarding Lobbying (see Appendix B)**.

Pursuant to Section 12.9 of the required federal provisions, each Proposer must submit a **Certification Regarding Consultant Status – Suspension/Debarment (see Appendix C)**.

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Attachment 1 Proposal Checklist

The following checklist is provided as guidance only and need not be included in the Proposer's final proposal.

Proposal format: Proposals shall be typewritten, with a standard body text font (e.g., Calibri, Times New Roman, Garamond) of at least 12-point. One page is a single 8 ½" x 11" sheet of paper, printed on both sides. Please number pages consecutively in the lower right-hand corner, after the table of contents. Proposals shall be organized in the order listed in this "Proposal Requirements" section and shall not exceed ten double-sided pages. While double-spaced narratives are not required, the liberal use of white space is appreciated.

Proposal

The following do not count toward page limit:

- Cover Sheet
- Table of Contents

The following count towards ten-page limit:

- Project Understanding, Project Approach, Proposer Experience, Project Team Experience, Project Cost
- Billing Rates (up to 1 page)
- Goals, Tasks, and Timeline (up to 1 page)

Supporting Information - Does not count toward page limit:

- Introductory Letter
- 2-3 References
- D&B Financial Statement or written statement from the owner/CFO
- Optional graphs, examples, photos, etc.
- Certification Regarding Lobbying (see Appendix B)
- Certification Regarding Consultant Status – Suspension/Debarment (see Appendix C)

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APPENDIX A

SAMPLE PROFESSIONAL SERVICES AGREEMENT

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**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) for the Program and Community Transportation Options Assessment Project (“Project”) is made and entered into on this ____ day of _____ 2020 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and _____ a(n) _____ [state] _____ [corporation/limited liability company, etc.] (hereinafter referred to as “Consultant”).

RECITALS

WHEREAS, the City requires services which Consultant is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Consultant represents that Consultant is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Scope of Work

Consultant shall diligently perform the evaluation services according to the requirements identified in the Scope of Work for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Services”).

Section 2. Term

The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than June 30, 2022, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

Section 3. Consultant’s Services

3.1. All written documents, drawings, and plans submitted by Consultant in conjunction with the Services shall bear the signature, stamp, or initials of Consultant’s authorized Project Manager. Any documents submitted by Consultant that do not bear the signature, stamp, or initials of Consultant’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Services or Scope of Work given by Consultant’s

Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Consultant's Project Manager will provide such written documentation.

3.2. Consultant will not be deemed to be in default by reason of delays in performance due to circumstances beyond Consultant's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Consultant's direction and control ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly and proportionately by the City, in writing. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

3.3. The existence of this Agreement between the City and Consultant shall not be construed as the City's promise or assurance that Consultant will be retained for future services beyond the Scope of Work described herein.

3.4. Consultant shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Consultant may have access by reason of this Agreement. Consultant warrants that Consultant's employees assigned to the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

Section 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed _____ DOLLARS (\$_____), for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant.

4.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Work described on **Exhibit A**, Consultant shall provide such additional services and bill the City at the hourly rates outlined on Consultant's Rate Schedule, as set forth in **Exhibit B**. Notwithstanding the foregoing, any additional work beyond the Scope of Work or any compensation above the amount shown in **Subsection 4.1** requires a written Addendum executed in compliance with the provisions of **Section 17**.

4.3. Except for amounts withheld by the City pursuant to this Agreement, Consultant will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Consultant as promptly as is reasonably possible.

4.4. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, and all other similar fees resulting from this Project, that are not specifically covered by **Exhibit A**.

4.5. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

Section 5. City's Rights and Responsibilities

5.1. The City will designate a Project Manager to facilitate day-to-day communication between Consultant and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

5.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2019-20. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this contract early, as described in **Section 15**.

Section 6. City's Project Manager

The City's Project Manager is Elli Work. The City shall give Consultant prompt written notice of any re-designation of its Project Manager.

Section 7. Consultant's Project Manager

Consultant's Project Manager is _____. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Consultant's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Consultant that is not from Consultant's designated Project Manager, the City may request verification by Consultant's Project Manager, which verification must be promptly furnished.

Section 8. Project Information

Except for confidential information designated by the City as information not to be shared, Consultant agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 9. Subcontractors and Assignments

9.1. Unless expressly authorized in **Exhibit A** or **Section 10** of this Agreement, Consultant shall not subcontract with others for any of the Services prescribed herein. Consultant shall not assign any of Consultant's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion. Some Services may be performed by persons other than Consultant, provided Consultant advises the City of the names of such subcontractors and the work which they intend to perform, and the City specifically agrees in writing to such subcontracting. Consultant acknowledges such work will be provided to the City pursuant to a subcontract(s) between Consultant and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Agreement, the City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this Agreement without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for work performed by others on behalf of Consultant shall not be subject to additional reimbursement by the City.

9.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Agreement. Consultant shall cooperate with the City and other firms, engineers or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Consultant shall furnish other engineers, subcontractors and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

9.3. Consultant shall include this Agreement by reference in any subcontract and require subcontractors to perform in strict compliance with this Agreement.

Section 10. Consultant Is Independent Contractor

10.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Project.

10.2. Consultant may request that some consulting services be performed on the Project by persons or firms other than Consultant, through a subcontract with Consultant. Consultant acknowledges that if such services are provided to the City pursuant to a subcontract(s) between Consultant and those who provide such services, Consultant may not utilize any subcontractor(s), or in any way assign its responsibility under this Agreement, without first obtaining the express written consent of the City, which consent may be given or denied in the City's sole discretion. For all Services performed under subcontract to Consultant, as approved by the City, Consultant shall only charge the compensation rates shown on the approved Rate Schedule (**Exhibit B**). Rate schedules for named or unnamed subcontractors, and Consultant markups of subcontractor billings,

will only be recognized by the City as set forth in Consultant's Rate Schedule, unless documented and approved, in writing, by the City pursuant to a modification to Consultant's Rate Schedule, per **Section 17** of this Agreement. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

10.3. Consultant shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Consultant shall require that all of Consultant's subcontractors also comply with, and be subject to, the provisions of this **Section 10** and meet the same insurance requirements of Consultant under this Agreement.

Section 11. Consultant Responsibilities

11.1. Consultant must make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement as such claims become due. Consultant shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Consultant. If Consultant fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

11.2. Consultant must comply with all applicable Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Consultant shall make all required workers compensation and medical care payments on time. Consultant shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

11.3. No person shall be discriminated against by Consultant or any subcontractor in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City. References to "subcontractor" mean a subcontractor at any tier.

Section 12. Required Federal Provisions

This Agreement is funded, in whole or in part, with federal funds. Consultant must therefore comply with all of the following, in addition to the provisions listed above:

12.1. **Clean Air and Clean Water.** If the Compensation Amount is \$150,000 or more, Consultant agrees to comply with the inspection and other requirements of the Clean Air Act, as amended (42 USC § 7401 *et seq.*), and the Federal Water Pollution Control Act, as amended (33 USC § 1251 *et seq.*). Consultant agrees it will not use any violating facilities, it will report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (EPA) “List of Violating Facilities,” and it will report any violation of use of prohibited facilities to the City. Consultant understands and agrees that the City will, in turn, report each violation, as required, to assure notification to the U.S. Federal Transit Administration (FTA) and the appropriate EPA Regional Office. Consultant also agrees to include these requirements in each subcontract exceeding \$150,000, financed in whole or in part with federal assistance provided by the FTA.

12.2. **Energy Conservation.** Consultant agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

12.3. **Recovered Materials.** Consultant agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended (42 USC § 6962), and U.S. Environmental Protection Agency, “Comprehensive Procurement Guideline for Products Containing Recovered Materials” (40 CFR Part 247).

12.4. **Lobbying Restrictions.** If the Compensation Amount is \$100,000 or more, Consultant certifies, to the best of its knowledge and belief, that:

12.4.1. No federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of 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 of any federal contract, grant, loan, or cooperative agreement.

12.4.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence 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, Consultant will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

12.4.3. Consultant will require that the language of this certification be included in the award documents for all sub-awards, at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. 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.

12.5. Access to Records and Reports. The following federal access to records requirements apply to this Agreement:

12.5.1. Record Retention. Consultant agrees to retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to this Agreement, including but not limited to documents, reports, data, statistics, subcontracts, sub-agreements, leases, arrangements, other third party agreements of any type, and supporting materials related to those records.

12.5.2. Retention Period. Consultant agrees to comply with the record retention requirements in accordance 2 CFR § 200.333. Consultant will maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case records will be maintained until the City, South Metro Area Regional Transit (SMART), the Federal Transit Administration (FTA) Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

12.5.3. Access to Records. Consultant agrees to provide the City, SMART, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, sufficient access to any books, documents, papers, and records of Consultant which are related to performance of this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions, as reasonably may be required. Consultant also agrees to permit any of the foregoing parties (at their costs) to reproduce by any means whatsoever any excerpts and transcriptions as reasonably needed.

12.5.4. Access to the Sites of Performance. Consultant agrees to permit the FTA and its contractors access to the sites of performance under this Agreement as reasonably may be required.

12.6. Civil Rights Requirements.

Under this Agreement, Consultant will, at all times, comply with the following requirements and will include these requirements in each subcontract entered into as part thereof.

12.6.1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d), Section 303 of the Age Discrimination Act of 1975, as amended (42 USC § 6102), Section 202 of the Americans with Disabilities Act of 1990, as amended (42 USC § 12132), and federal transit laws at 49 USC § 5332, Consultant agrees

that it will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, age, disability, or national origin. In addition, Consultant agrees to comply with applicable federal implementing regulations and other implementing requirements the FTA may issue.

12.6.2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended (42 USC § 2000e *et seq.*), and federal transit laws at 49 USC § 5332, Consultant agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" (41 CFR Chapter 60), and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965; 42 USC § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 USC § 2000e note. Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Consultant agrees to comply with any implementing requirements the FTA may issue.

12.6.3. Age. In accordance with the Age Discrimination in Employment Act of 1967, as amended (29 USC §§ 621-634); U.S. Equal Employment Opportunity Commission regulations, "Age Discrimination in Employment Act" (29 CFR Part 1625); the Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*); U.S. Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance" (45 CFR Part 90); and federal transit law at 49 USC § 5332, Consultant agrees to refrain from discrimination against present and prospective employees on the basis of age. In addition, Consultant agrees to comply with any implementing requirements the FTA may issue.

12.6.4. Disabilities. In accordance with Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794); the Americans with Disabilities Act of 1990, as amended (42 USC § 12101 *et seq.*); the Architectural Barriers Act of 1968, as amended (42 USC § 4151 *et seq.*); and federal transit law at 49 USC § 5332, Consultant agrees that it will not discriminate against individuals on the basis of disability. In addition, Consultant agrees to comply with any implementing requirements the FTA may issue.

12.7. **Disadvantaged Business Enterprises.** If the City must adopt a Disadvantaged Business Enterprise (DBE) program, the parties will execute a written amendment so that this Agreement becomes subject to the City's DBE program. Consultant shall not discriminate on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin in the performance of this Agreement. Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Consultant to carry out these requirements is a material breach of this

Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate.

12.8. Program Fraud and False or Fraudulent Statements and Related Acts.

12.8.1. Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended (31 USC § 3801 *et seq.*), and U.S. Department of Transportation regulations, “Program Fraud Civil Remedies” (49 CFR Part 31), apply to its actions pertaining to this Project. Upon execution of this Agreement, Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the FTA assisted Project for which the Services are being performed. In addition to other penalties that may be applicable, Consultant further acknowledges that if it makes, or causes to be made, 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 on Consultant to the extent the Federal Government deems appropriate.

12.8.2. Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 USC Chapter 53, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5323(l) on Consultant, to the extent the Federal Government deems appropriate.

12.8.3. Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

12.9. Suspension and Debarment.

12.9.1. Consultant must comply with and facilitate compliance with U.S. Department of Transportation regulations, “Nonprocurement Suspension and Debarment” (2 CFR Part 1200), which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)” (2 CFR Part 180). Consultant is required to verify that its principals, affiliates, and any subcontractors are eligible to participate in this federally funded Contract and are not presently declared by any federal department or agency to be debarred, suspended, proposed for debarment, voluntarily excluded, disqualified, or declared ineligible from participation in any federally assisted award.

12.9.2. Consultant is required to comply with Subpart C of 2 CFR Part 180, as supplemented by 2 CFR Part 1200, and must include the requirement to comply with Subpart C of 2 CFR Part 180 in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, Consultant has certified as follows:

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

12.10. Trafficking in Persons.

12.10.1. Consultant agrees that it and its employees that participate in the vanpool program covered under this Agreement may not:

12.10.1.1. Withholding monthly progress payments;

12.10.1.2. Engage in forms of trafficking in persons during the period of time that this Agreement is in effect;

12.10.1.3. Procure a commercial sex act during the period of time that this Agreement is in effect; or

12.10.1.4. Use forced labor in the performance of the Agreement or any subcontracts thereunder.

12.10.2. Consultant agrees to comply, and assures the compliance of each subrecipient, with federal requirements and guidance, including:

12.10.2.1. Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 USC § 7104(g); and

12.10.2.2. The terms of this Section, which have been derived from U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 CFR Part 175, per U.S. OMB’s direction.

12.10.3. Consultant agrees to, and assures that each subrecipient will:

12.10.3.1. Inform the FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in this clause; and

12.10.3.2. Include the substance of this clause in all agreements or subcontracts with recipients, subrecipients, suppliers, and subcontractors at every tier, including this requirement to flow down the clause.

12.11. **Safe Operation of Motor Vehicles.** Consultant is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that ban text messaging while using an electronic device supplied by an employer and driving a vehicle the driver owns or rents, a vehicle Consultant owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Agreement.

12.12. **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 any Master Agreement between the City and the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Consultant's failure to so comply shall constitute a material breach of this Agreement.

12.13. **Termination.** The termination clause for this Agreement can be found in **Section 15**, below.

12.14. **No Obligation by the Federal Government.**

12.14.1. The City and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this 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 City, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this contract.

12.14.2. Consultant agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

12.15. **Federal Transit Administration (FTA) Terms Controlling.** 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. Consultant shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

Section 13. Indemnity

13.1. Indemnification. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant's failure to perform its

responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 13.2**. Consultant shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Consultant. As used herein, the term "Consultant" applies to Consultant and its own agents, employees, and suppliers, and to all of Consultant's subcontractors, including their agents, employees, and suppliers.

13.2. Standard of Care. In the performance of the Services, Consultant agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Consultant's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

Section 14. Insurance

14.1. Insurance Requirements. Consultant shall maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder. Any and all agents, contractors, or subcontractors with which Consultant contracts to work on the Services must have insurance that conforms to the insurance requirements in this Agreement. Additionally, if a subcontractor is an engineer, architect, or other professional, Consultant must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

14.1.1. Commercial General Liability Insurance. Consultant and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount

of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

14.1.2. Professional Errors and Omissions Coverage. Consultant agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$2,000,000** per claim. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Agreement, and coverage will remain in force for a period of at least three (3) years after termination of this Agreement.

14.1.3. Business Automobile Liability Insurance. If Consultant or any subcontractors will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

14.1.4. Workers Compensation Insurance. Consultant, its subcontractors, and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

14.1.5. Insurance Carrier Rating. Coverages provided by Consultant and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

14.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages. Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An

endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Consultant must be an additional insured on the insurance policies obtained by its subcontractors performing work on the Services contemplated under this Agreement.

14.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Consultant shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice and Consultant will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

14.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Consultant will be required to maintain such policies in full force and effect throughout any warranty period.

Section 15. Early Termination; Default

15.1. This Agreement may be terminated prior to the expiration of the agreed upon terms:

15.1.1. By mutual written consent of the parties;

15.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person; or

15.1.3. By Consultant, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Consultant, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

15.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to

an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

15.3. If the City terminates this Agreement for its own convenience not due to any default by Consultant, payment of Consultant shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Consultant against the City under this Agreement.

15.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 19**, for which Consultant has received payment or the City has made payment.

Section 16. Suspension of Services

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within Consultant's control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Consultant. Should the City suspend, delay, or interrupt the Services and the suspension is not within Consultant's control, then the City shall extend the time of completion by the length of the delay.

Section 17. Modification/Addendum

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Work or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of an Addendum. Consultant's failure to submit such written request for modification in the form of an Addendum shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Agreement affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment, and other costs. If Consultant incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum. To be enforceable, the Addendum must describe with particularity the nature of the change, any delay in time the Addendum will cause, or any increase or decrease in the Compensation Amount. The Addendum must be signed and dated by both Consultant and the City before the Addendum may be implemented.

Section 18. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Consultant as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts during the term of this Agreement and for a period of four (4) years after termination of the Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 19. Property of the City

19.1. All documents, reports, and research gathered or prepared by Consultant under this Agreement, including but not limited to spreadsheets, charts, graphs, drawings, modeling, maps, data generation, papers, diaries, and inspection reports, shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to the City upon request without additional compensation.

19.2. Consultant shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all work performed by Consultant pursuant to this Agreement without the express written permission of Consultant.

Section 20. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
Attn: Elli Work, Grants & Program Manager
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Consultant: _____
Attn: _____

Section 21. Miscellaneous Provisions

21.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Agreement shall control.

21.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

21.3. No Assignment. Consultant may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

21.4. Adherence to Law. In the performance of this Agreement, Consultant shall adhere to all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Consultant is required by law to obtain or maintain in order to perform the Services described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

21.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

21.6. Jurisdiction. Venue for any dispute will be in Clackamas County Circuit Court.

21.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

21.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

21.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

21.10. Modification. This Agreement may not be modified except by written instrument executed by Consultant and the City.

21.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

21.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

21.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

21.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

21.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

21.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

21.17. Interpretation. As a further condition of this Agreement, the City and Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

21.18. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

21.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

21.20. Authority. Each party signing on behalf of Consultant and the City hereby warrants actual authority to bind their respective party.

The Consultant and the City hereby agree to all provisions of this Agreement.

CONSULTANT:

By: _____

Print Name: _____

As Its: _____

Employer I.D. No. _____

CITY:

CITY OF WILSONVILLE

By: _____

Print Name: _____

As Its: _____

APPROVED AS TO FORM:

Amanda Guile-Hinman, Asst. City Attorney
City of Wilsonville, Oregon

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EXHIBIT A SCOPE OF WORK

I. INTRODUCTION

To improve SMART's TO Program, the Consultant will:

1. Provide an evaluation of the existing TO Program and highlight current challenges and detail opportunities for growth and improvement;
2. Conduct a TO Community Assessment;
3. Create a baseline from which the program can quantify progress moving forward; and
4. Conduct an end of project evaluation.

The Project will culminate in an evaluation of progress, starting from the established baseline to the end of the program in June 2022.

II. DELIVERABLES

For the purpose of this Project, goals, associated tasks, and resulting deliverables are:

Goal #1: Evaluate the Current TO Program

Task 1: Identify where the program has gaps in service, challenges/barriers to participation, inadequate data collection, etc.

Task 2: Specifically evaluate where communities of color, the LGBTQ community, and other marginalized groups are involved or excluded.

Task 3: Provide recommendations for improvement and growth that will increase program effectiveness in reducing Single Occupancy Vehicles (SOV).

Deliverable: A TO Program evaluation that includes recommendations for improvement and growth that will increase program participation and effectiveness.

(See <https://www.oregonmetro.gov/travel-options-research> for additional information.)

Goal #2: Conduct a Community TO Assessment

Task 1: Provide public outreach in the form of community meetings, focus groups, one-on-one interviews, surveys, etc.

Task 2: Engage communities of color, the LGBTQ community, low-income families, and other marginalized groups in leadership roles in performing the TO assessment.

Task 3: Provide data and recommendations to inform strategic planning, priority setting, program outcomes, and program improvements.

Deliverable: A TO Community Assessment Report that includes a summary of survey findings. The report will also detail how community members from marginalized groups were engaged.

Goal #3: Create a TO baseline

Task 1: Create a baseline from which the program can quantify progress moving forward.

Deliverable: A clear program baseline with recommendations and details explaining consultant's methodology.

Goal #4: Produce an End Project Evaluation

Task 1: Analyze data collection, i.e., quarterly reports to Metro, and conduct staff interviews.

Task 2: Produce an end of project report summarizing the growth and remaining challenges of the TO Program.

Task 3: Make final recommendations.

Deliverable: A final evaluation report with recommendations for the program moving forward.

All materials and reports are expected to be produced and presented in a high quality, timely, and professional manner. Deliverables may include bound reports, photos, filmed interviews, power point presentations, etc.

III. COMMUNICATION

Ongoing communication between key SMART staff and the consultant will be considered critical to the success of the project. Therefore, SMART expects the following:

- SMART staff and the consultant will meet on a regular basis. Meeting times and places will be established after award of the contract.
- At a minimum, key project staff will meet after each completed milestone where the consultant can present their work.

IV. TIMELINE AND BUDGET

This Project runs from the date of award (on or about 04/06/2020) to June 30, 2022. Estimated timelines for deliverables may be adjusted, as needed, by mutual consent.

The budget for this project is estimated at \$80,000.

APPENDIX B

CERTIFICATION REGARDING LOBBYING

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CERTIFICATION REGARDING LOBBYING

The undersigned Consultant certifies, to the best of his or her 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of 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 of any Federal contract, grant, loan, or cooperative agreement.

(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 instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601 *et seq.*)].

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction, imposed by 31 U.S.C. § 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Consultant certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.* apply to this certification and disclosure, if any.

_____ Signature of Consultant

_____ Signature of Consultant's Authorized Official

_____ Name and Title of Consultant's Authorized Official

_____ Date

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APPENDIX C

CERTIFICATION REGARDING CONSULTANT STATUS – SUSPENSION/DEBARMENT

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**CERTIFICATION REGARDING CONSULTANT STATUS
SUSPENSION / DEBARMENT**

This Contract may be a covered transaction for purposes of 49 CFR Part 29. As such, the Consultant is required to verify that none of the Consultant, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified, as defined at 49 CFR 29.940 and 29.945.

The Consultant is required to comply with 49 CFR 29, Subpart C, and must include the requirement to comply with 49 CFR 29, Subpart C, in any lower tier covered transaction Consultant enters into.

By signing and submitting its bid or proposal, the Bidder certified as follows:

The certification in this clause is a material representation of fact relied upon by the City of Wilsonville. If it is later determined that the Bidder knowingly rendered an erroneous certification, in addition to remedies available to the City of Wilsonville, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder agrees to comply with the requirements of 49 CFR 29, Subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Bidder or Consultant Signature

Date

Bidder or Consultant Signature

Date

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