

RESOLUTION NO. 2660

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING SOUTH METRO AREA REGIONAL TRANSIT (SMART) TO CONTRACT WITH THE CENTER FOR TRANSPORTATION AND THE ENVIRONMENT (CTE) FOR CONSULTING WORK ASSOCIATED WITH THE DEPLOYMENT OF BATTERY ELECTRIC TRANSIT BUSES.

WHEREAS, a goal of SMART is to replace aging buses with modern, low emission vehicles; and

WHEREAS, SMART has been awarded \$1.45M in federal funding, under FTA section 5339 (c) for low emission/no emission transit buses; and

WHEREAS, the grant agreement allows for partnership with a consulting firm at 100% federal coverage; and

WHEREAS, CTE partnered with SMART in the initial grant application, eliminating the need for further competitive procurements; and

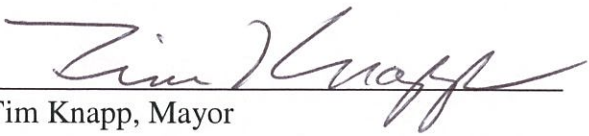
WHEREAS, the not to exceed amount of the contract, \$120,000, was built into the grant application for grant reimbursement ; and

WHEREAS, the City Council has duly appointed itself as the Local Contract Review Board, and acting as the Local Contract Review Board, is authorized to award the contract as recommended by staff.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. Based on the above recitals, which are incorporated herein, the City Council, acting as the Local Review Board, does hereby approve and authorize SMART to enter into a contract with CTE, in an amount not to exceed \$120,000, to perform consulting work.
2. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 18th day of December, 2017, and filed with the Wilsonville City Recorder this date.



Tim Knapp, Mayor

ATTEST:



Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Councilor Starr	Excused
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

Attachments:

Exhibit A – Letter of Agreement for Scope of Work



December 20, 2017

Scott Simonton
Fleet Services Manager
City of Wilsonville
29799 SW Town Center Loop Wilsonville, OR, 97070

Re: Letter Agreement for Scope of Work related to City of Wilsonville Zero Emission Bus Project

Dear Mr. Simonton,

This Letter Agreement between the Center for Transportation and the Environment ("CTE"), located at 730 Peachtree Street, Suite 760, Atlanta, GA 30308 and City of Wilsonville, located at 29799 SW Town Center Loop E, Wilsonville, OR 97070, both hereinafter referred to collectively as the "Parties" and individually as "Party," serves as the contract for the scope of work that CTE agrees to provide under the City of Wilsonville 2017 Low No Award. In consideration of the mutual covenants contained herein, the parties agree as follows:

The following attachments are incorporated by reference and made part of this Letter Agreement herein:

- Attachment I:* CTE Statement of Work & Budget
- Attachment II:* Applicable Federal Terms & Conditions

1) STATEMENT OF SERVICES TO BE PERFORMED

By executing this Letter Agreement, CTE agrees to perform and comply with the scope of work set forth in the Statement of Work, attached and fully incorporated herein as *Attachment I*. CTE shall perform the scope of work specified in the time and manner described and in accordance with the terms and provisions of this Agreement. CTE agrees to perform the scope of work with that standard of professional care, skill, and diligence normally provided in the performance of similar services.

2) TERM OF AGREEMENT

The period of performance for this Agreement shall commence upon the execution of this Letter Agreement by both parties. Services, work products and/or deliverables defined in CTE's Statement of Work shall be completed no later than December 31, 2019.

3) AGREEMENT AMOUNT

The total Agreement Amount to be paid CTE for the Milestone based scope of work defined under this Agreement shall not exceed One Hundred and Twenty Thousand Dollars (\$120,000.00). See Attachment I for the agreed upon Milestones and budget at the time of this Agreement. For any



additional work performed outside of the Milestones defined in Attachment I, CTE will be paid on an hourly basis, CTE will invoice City of Wilsonville for services provided based on hours worked and agreed allowable costs. For work performed on an hourly rate, CTE and City of Wilsonville will mutually agree on a scope, estimated or maximum budget, and deliverable(s) associated with the additional work prior to commencement.

4) INVOICES

CTE will submit invoices to City of Wilsonville upon completion and acceptance of each deliverable specified in the statement of work. The City of Wilsonville will review deliverables within 15 days of submission and either request revisions or indicate acceptance. Any requested revisions shall be made within 15 days, after which the deliverable will be resubmitted by CTE. The final invoice will be submitted by CTE within 30 days of the acceptance of the final deliverable or Termination of this Agreement. Invoices for agreed hourly costs beyond the milestones will be submitted not more than monthly. Invoices will be submitted to Scott Simonton, by mail, courier, or e-mail to simonton@ci.wilsonville.or.us.

5) TERMINATION

This agreement may be terminated in whole or in part as follows:

- A. By Either party, if the Other Party materially fails to comply with the terms and conditions of this Agreement and such failure is not corrected within fifteen (15) days following receipt of written notice from the non-breaching party.
- B. By CTE, upon thirty (30) days written notification to City of Wilsonville setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated.
- C. By City of Wilsonville, upon thirty (30) days written notification to CTE setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated.
- D. By City of Wilsonville, if City of Wilsonville's prime award supporting this Letter Agreement is terminated by the Federal Transit Administration.

Except in the case of a material breach by CTE, upon Termination, City of Wilsonville will reimburse CTE for the contract price of services performed in accordance with the manner of performance set forth in this Agreement prior to termination.

6) INDEMNIFICATION

- A. To the extent allowed by Oregon law, each Party (the "Indemnifying Party") agrees to, and will, indemnify, defend, and hold harmless the other Party (the "Indemnitee") and its Board Members, officers, agents, employees, and representatives against any liabilities, losses, claims, expenses (including attorney's fees) or damage they may suffer as a result of third party claims, demands, actions, costs or judgments resulting or alleged to have resulted



from the Indemnifying Party's negligence or willful misconduct related to performance under this contract, except to the extent that the liability, loss or damage results from (i) the non-Indemnifying Party's failure to substantially comply with any applicable law; or (ii) the negligence or willful malfeasance of any board member or employee of the non-Indemnifying Party.

- B. It is further agreed by and between the Parties that the Indemnitee shall (a) promptly notify the Indemnifying Party in writing of any claim for which indemnification is sought and (b) forward to the Indemnifying Party any other information available regarding the claim as promptly as is reasonably practicable; provided that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations hereunder except to the extent that the Indemnifying Party is actually and materially prejudiced by such failure.
- C. The Indemnifying Party shall be entitled, at its option, to assume and control the defense of any third party claim under this section, at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnitee within 45 days of the receipt of notice of the right to be indemnified.

7) INDEPENDENT CONTRACTOR

The Parties agree that CTE, as well as any individual working for CTE, is an independent contractor and not an employee of City of Wilsonville for any purpose. Nothing contained in this Agreement shall be construed to create the relationship of employer and employee, principal and agent, partnership, or joint venture. Both parties acknowledge that CTE is not an employee for state or federal tax purposes and is not entitled to any employee benefits of City of Wilsonville.

8) FORCE MAJEURE

Neither CTE nor City of Wilsonville shall be liable for or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy or hostile governmental action, strikes, labor disputes, fire or other casualty, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of CTE or City of Wilsonville. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Agreement.

9) MISCELLANEOUS

- A. Subcontracting. CTE may subcontract with third party providers in performance of specific tasks included in CTE's Statement of Work. In the event that subcontractors are used, CTE will notify City of Wilsonville of the intent to use subcontractors and ensure subcontractor



- adherence to the same quality standards and assurances required of CTE, including adherence to applicable Federal Terms and Conditions.
- B. **Non-Exclusivity.** As an independent contractor, CTE may engage the services of any other individual or company that competes with City of Wilsonville or offers services similar to those offered by City of Wilsonville, and any such engagement shall not be considered a breach of this Agreement.
 - C. **Entire Agreement.** This Agreement constitutes the entire Agreement of the Parties with respect to the subject matter of the Agreement and supersedes all previous oral and written agreements, understandings, and communications of the Parties relating to such matters.
 - D. **Amendment or Waiver.** This Agreement may not be modified, amended or waived except by a written instrument executed by duly authorized representatives of both parties. No failure or delay in exercising any right shall operate as a waiver thereof.
 - E. **Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same contract.
 - F. **Severability.** Should any part of this agreement be rendered or declared invalid or unenforceable by a court of competent jurisdiction, it shall not affect the validity of any other provision, which shall remain in full force and effect.
 - G. **Assignment.** Neither Party may assign its respective rights or duties under this agreement to a third Party (except to a successor in interest to substantially all of the business of the assignor) without the prior written consent of the other Party.
 - H. **Governing Law and Venue.** This Agreement will be governed by and constructed in accordance with the laws of the State of Oregon, USA, without regard to the conflict of laws principles thereof. Venue for any dispute will be in Clackamas County Circuit Court, State of Oregon.
 - I. **Headings.** Headings on the sections and paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.
 - J. **Survival of Terms.** The provision of section 6 (Indemnification) shall survive the expiration or termination of this Agreement.



Please indicate your acceptance of these terms by returning one signed copy of this letter agreement to CTE.

Center for Transportation & the Environment (CTE):

Read, agreed to, and accepted by City of Wilsonville:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Enclosures:

Attachment I: CTE Statement of Work & Budget

Attachment II: Applicable Federal Terms & Conditions



Attachment I
CTE Statement of Work & Budget



Attachment II
Applicable Federal Terms & Conditions

GENERAL PROVISIONS REQUIRED FEDERAL CLAUSES

1. No Government Obligation to Third Parties

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

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

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

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies", 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor 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 the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor 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 the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor 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 FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

3. Access to Records and Reports

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this

contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

4. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Transit Agency and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. Civil Rights Requirements

The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of

age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (4) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. Energy Conservation Requirements

The contractor 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.

7. Government-Wide Debarment and Suspension (Nonprocurement)

Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)", 2 C.F.R. Part 180. As such, the contractor shall verify that none of the contractor, its principals, as defined at 2 CFR 1200, or affiliates, as defined at 2 CFR 1200, are not presently declared by any Federal department or agency to be:

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

The contractor is required to comply with 2 CFR 1200, and must include the requirement to comply with 2 CFR 1200 in any lower tier contract for \$25,000 or more.

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

The certification in this clause is a material representation of fact relied upon by Transit Agency. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Transit Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder

or proposer agrees to comply with the requirements of 2 CFR 1200 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Lobbying

Contractor 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 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.
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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. Contractor will require that the language of this certification be included in the award documents for all sub-awards for more than \$100,000 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 clause is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification clause 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.

9. Recycled Products

The Contractor 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 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

10. Safe Operation of Motor Vehicles

- a) **Seat Belt Use.** The Contractor 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. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or AGENCY.
- b) **Distracted Driving.** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.