



Marketing and creative services

RFP 11-1824

Metro Planning Department

600 NE Grand Ave.
Portland, OR 97232
503-797-1700

Project Manager

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Procurement Analyst

Dianne Hutchins
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Notice is hereby given that proposals for RFP 11-1824 for Planning shall be received by Metro, 600 NE Grand Avenue, Portland OR 97232 until 3:00 PM on February 23, 2011. It is the sole responsibility of the proposer to ensure that Metro receives the Proposal by the specified date and time. All late Proposals shall be rejected. Proposers shall review all instructions and contract terms and condition

Request for Proposals

Request for Proposals for Marketing and creative services for Healthy Homes, Healthy Families outreach campaign

I. INTRODUCTION

The Planning Department and Sustainability Center of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals for Marketing and Communications services for outreach focused on reaching Latino families in the Portland metropolitan region, particularly the area of Hillsboro, Forest Grove and Cornelius. Proposals will be due no later than Feb 23, 2011 at 3 p.m. in Metro's business offices at 600 NE Grand Avenue, Portland, OR 97232-2736. Details concerning the project and proposal are contained in this document.

II. BACKGROUND/HISTORY OF PROJECT

About Metro

Metro, the regional government that serves 1.5 million people who live in Clackamas, Multnomah and Washington counties and the 25 cities in the Portland metropolitan area, provides planning and other services that protect the nature and livability of our region. To achieve that mission, Metro offers a wide variety of programs and services, ranging from solid waste disposal and recycling to land use planning. For more information, visit www.oregonmetro.gov.

About Metro Sustainable Living Programs

Metro sustainable living programs encourage regional residents and businesses to adopt behaviors, such as recycling, reducing toxics, gardening without pesticides or herbicides, biking and walking. These behaviors result in reduced emissions, improved air quality and safer and more livable neighborhoods. For more information, visit:

www.oregonmetro.gov/sustainableliving

<http://www.oregonmetro.gov/index.cfm/go/by.web/id=24197>

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About the project

Funding is available from Metro's waste reduction and travel options programs to create an outreach campaign focused on reaching Latino families. This is a two-year contract. The goal is to educate Latino families in the Portland metropolitan region about Metro and its sustainability initiatives, such as walking, biking, recycling and reducing waste.

Partnerships, event sponsorships, a media campaign and event outreach will be the primary vehicles for the campaign.

This campaign is part of the initial phase of Metro's Vámonos project to create bike and walk mapping materials co-developed in English and Spanish for families, particularly Latino families, in Forest Grove, Hillsboro and Cornelius. For more information, visit <http://news.oregonmetro.gov/1/post.cfm/metro-awarded-kaiser-permanente-grant-for-bike-walk-mapping-project-in-cornelius-forest-grove-and-hillsboro>.

Metro has conducted initial research with several Latino outreach organizations, such as Adelante Mujeres and Centro Cultural to better understand the needs of the community and key events in the area. Metro and the awarded agency will work together to leverage Metro's existing market research and partnerships.

Campaign goals

- Increase awareness of recycling, reducing the use of toxics and using travel options, such as walking, biking and taking transit, among Latino families in the metro region.
- Increase Metro's understanding of how to effectively connect with and educate Latino families about adopting sustainable behaviors.
- Increase the awareness of Metro among Latino families in the metro region, particularly in Forest Grove, Cornelius and Hillsboro.
- Develop a culturally competent campaign with messages, collateral pieces, ads and outreach activities to connect with Latino families in meaningful, effective ways about sustainability. This project is a pilot and the research and methodology will be applied more widely to other Metro programs.
- Increase Latino families' awareness and trust of Metro and its sustainable living programs.

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Overarching Metro sustainable program goals

- Increase the number of people in key audiences adopting Metro sustainable behaviors.
- Increase awareness of, participation in and satisfaction of Metro sustainable living programs among key audiences.
- Increase dialogue and feedback from key audiences about Metro sustainable living programs and related policies.
- Increase the public's awareness and trust of Metro by aligning the sustainable living program's marketing efforts with other Metro initiatives and policy work.

III. PROPOSED SCOPE OF WORK/SCHEDULE

Metro is seeking proposals from qualified firms to perform the following services and to deliver the services described:

- Provide market research, demographic profiles and consultation on how Metro can effectively reach Latino families in the Portland metropolitan region with relevant messaging and information about sustainable behaviors.
- Provide creative services support, such as copy writing, message strategy and testing, translation, graphic design, branding guidance, creating and producing TV, radio and print ads and printed collateral, if recommended by agency, to assist Metro in developing an effective outreach campaign to Latino families to increase their awareness and adoption of sustainable behaviors.
- Provide evaluation and measurement framework to assess campaign effectiveness and activities related to the project. Consult with Metro to set campaign metrics and baseline based on market research.
- Provide recommendations for outreach strategies on how to effectively reach Latino families in the Portland metropolitan area with sustainable behavior messaging, including, but not limited to, events, sponsorship recommendations, media buys, social media, public relations and partnership opportunities. Outreach will be particularly focused on Washington County in Forest Grove, Hillsboro and Cornelius.
- Support Metro with the co-development of bike and walk mapping materials co-developed in English and Spanish focused on the needs of families in Hillsboro, Forest Gove and Cornelius. This may include the facilitation of focus groups, design and production of materials, copy writing and co-development of deliverables in both English and Spanish.

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- Negotiate and place media buys. Agency to help determine and inform media buy. Confirm ads run as scheduled. Pay invoices for media buys. Disclose commissions.
 - Prepare and provide information on media outlet descriptions, reach, rankings and audience demographics; recommendations for buys based on coverage, cost and overall value; and schedule recommendations, including costs and deadlines for any required production of spots.
 - Recommend, negotiate, purchase and place media buys for promotional campaign. This includes forwarding traffic instructions and defining any required ad rotations, tag copy and cutoff times.
 - In consultation with Metro staff, investigate, develop and implement value-added airtime, web and print opportunities – including community or corporate partnerships – as applicable to the campaign and available through the respective outlets.
 - Prepare and submit monthly written progress reports and prepare and submit a final written report identifying and evaluating campaign activities, successes and lessons and recommending future strategies and tactics.
 - Secure make-good spots or credits, as applicable.
 - Verify all media-buy invoices, reconciling them with traffic instructions and checking for fair spot rotations, if appropriate, among all purchased time periods.

Scope of Work by Phase

Project Phase I: Healthy Homes, Healthy Families campaign research, recommendations

Timeline: Upon contract approval through end of March 2011

Budget: Approx. \$5-10,000 for campaign development for Phase I

Deliverables:

- Research recommendations; audience profile
- Messaging recommendations
- Marketing and outreach recommendations
- Measurement framework

Major Activities	Tasks
Audience analysis and research Message development, testing Marketing and media recommendations and schedule	<ul style="list-style-type: none"> • Meet with Metro staff to further understand campaign objectives, background and history. • Understand and assess Metro's existing audience research. Make recommendations if additional research is needed. • Support and coordinate focus groups or additional research, if needed. • Develop campaign messages based on testing with target audience.

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	<ul style="list-style-type: none"> • Recommend marketing strategies, such as events, event sponsorships, outreach opportunities, key partnership, other tactics and media. Assist Metro as needed with implementation of campaign. Metro to provide staff for event outreach. • Develop measurement framework for outreach investments.
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Project Phase II: Healthy Homes, Healthy Families campaign execution and implementation

Timeline: March, April 2011 – campaign to launch in May to public

Budget: Approx. \$5-10,000 for creation of campaign and deliverables
 Approx. \$10,000 for media buys (April-June)
 Approx. \$15-20,000 in printing budget for collateral and promos

Deliverables:

- Campaign name, logo, look, feel (Metro look and feel, Metro to review three different options)
- Campaign collateral, if recommended (printed, online materials, ads)
- Ad schedule and buy, contracts with media outlets
- Arrange event sponsorships and outreach opportunities (Metro to provide event staffing)

Major Activities	Tasks
Production, graphic design, copy writing, printing Media buying	<ul style="list-style-type: none"> • Design, copy writing, layout, production, printing, translation of recommended campaign deliverables. • Negotiate and place media buys with select stations. • Create recommended deliverables. • Prepare and provide information on media outlets: reach, rankings and audience demographics; recommendations for buys, based on coverage, cost and overall value; and schedule recommendations. • Recommend, negotiate, purchase and place buys for promotional campaign. Agency to pay outlets directly.

Project Phase III: Healthy Homes, Healthy Families campaign maintenance

Timeline: Campaign launch May 2011 continues through June 30. Campaign should be designed to continue through winter 2011, pending Council approval of budget.

Budget: Approx. \$2-5,000 for Phase III
 Ad budget to be determined beyond June 30.

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Deliverables:

- Maintenance and support for media buy, ad campaign
- Metrics and evaluation report.

Activities	Tasks
Maintenance for media buy, ad campaign	<ul style="list-style-type: none"> • Confirm ads run as scheduled; pay media outlets. • In consultation with Metro staff, investigate, develop and implement value-added airtime, web and print opportunities – including community or corporate partnerships. • Prepare and submit monthly written progress reports and prepare and submit a final written report identifying and evaluating campaign activities, successes and lessons and recommending future strategies and tactics. • Secure make-good spots or credits, as applicable.

Project Phase IV: Vámonos mapping project (Cornelius, Forest Grove, Hillsboro)

Timeline: May 2011 through February 2012

Budget: Approx. \$10,000-20,000 for this phase
 Ad budget to be determined for this phase after June 1, 2011.

Deliverables:

- Additional research recommendations for specific project area; audience profile for specific area, if needed
- Additional messaging recommendations focused on active transportation, if needed
- Design and layout for map materials, collateral and form factor recommendations (Metro to provide cartography and mapping services)
- Product testing and focus groups for draft materials
- Measurement framework

Activities	Tasks
Research Message and product testing Graphic design Copy writing and co-development of mapping materials	<ul style="list-style-type: none"> • Leverage research and message testing from campaign and assist Metro in applying information to mapping project geared at Latino families. • Support and coordinate focus groups or additional research and product testing, if needed. • Layout of recommended deliverable, such as a map, brochure, etc. Metro to provide cartography services.

Project Phase V: Launch of Healthy Homes, Healthy Families campaign (Year 2) featuring Vámonos map rollout and distribution.

Timeline: May – October 2012

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Budget: Approx. \$5-10,000 for this phase
 Ad and printing budget to be determined for this phase after June 1.

Deliverables:

- Marketing and outreach recommendations
- Measurement framework
- Updated campaign collateral if needed (printed, online materials, ads)
- Ad schedule and ad contracts with media outlets
- Arrange event sponsorships and recommended outreach activities if needed

Activities	Tasks
Campaign recommendations Media purchasing Campaign updates	<ul style="list-style-type: none"> • Recommend marketing strategies, such as events, event sponsorships, outreach opportunities, key partnership, other tactics and media. • Assist Metro as needed with implementation of campaign. Metro to provide staff for event outreach. • Develop measurement framework for outreach investments. • Update campaign if needed.

IV. QUALIFICATIONS/EXPERIENCE

Proposers shall have experience:

- Developing outreach campaigns in Spanish and English focused on reaching Latino families.
- Marketing behavior change or sustainable behaviors.
- Branding, message testing, copy writing in English and Spanish.
- Developing online and print campaign materials focused on reaching Latino audiences. Graphic design and production skills.
- The ideal candidate will have examples and case studies of developing and executing successful, measurable campaigns focused on reaching Latino audiences with behavior and social change initiatives.
- Measuring the success of communications and marketing investments.
- Developing, implementing, monitoring, adjusting and evaluating media-buying strategies on a modest budget to promote products and services to selected audiences.
- Negotiating, purchasing and placing radio, web and print buys to advertise products and services.

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- Advising clients on optimal placement and scheduling of advertisement and other promotional content in accordance with a project's goals, audience, strategies, timeline and budget.
- Coordinating with multiple parties to meet deadlines.
- Seeking, identifying and coordinating community or corporate partnerships and value-added opportunities to stretch the client's investment.

The successful respondent shall:

- Provide Metro with updated documentation, procedures, timelines and assignment schedules, and any technical documentation related to the project. Such materials shall be provided in a hard copy set of master manuals as well as electronic (in printable, automated or downloadable formats).
- Provide all data, media and documentation related to this project for archiving and long-term use.
- Agree that the content of Metro's information will remain the sole and confidential property of Metro.

Sustainability

In the interest of sustainable business practices, Metro encourages the use of submittal materials (i.e. paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content and are readily recyclable. Metro discourages the use of materials that cannot be readily recycled such as PVC (vinyl) binders, spiral bindings and plastic or glossy covers or dividers. Firms are encouraged to print/copy on both sides of a single sheet of paper wherever applicable.

V. PROJECT ADMINISTRATION

Under direction of Metro's Planning and/or Sustainability Center project management team, a designated point person from Metro will manage the resulting contract and provide assistance as necessary throughout the duration of contract terms to ensure the objectives of the contract are achieved. Metro staff will assign and manage work of Contractors. Metro staff shall have direct contact with Contractor's staff who will be performing the work. Contractors will cooperate with Metro staff and other consultants and contractors as directed to perform services required.

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600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

VI. PROPOSAL INSTRUCTIONS

A. Submission:

2 hard copies of the proposal shall be furnished to Metro in a sealed envelope(s), addressed to:

Metro
Planning Department
Dianne Hutchins
600 NE Grand Avenue
Portland, OR 97232-2736

Copies shall be printed double sided on white, 8.5x11, recycled paper. Stapled in the upper left corner.

1 copy of the proposal shall also be e-mailed to:

Dianne.Hutchins@oregonmetro.gov by 3 p.m. on Wednesday, February 23.

B. Deadline

Proposals (hard copy and email) will not be considered if received after 3 p.m., Wednesday, February 23, 2011.

C. RFP as Basis for Proposals:

This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any verbal information which is not addressed in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be addressed to Dianne Hutchins at (503) 797-1873. Any questions, which in the opinion of Metro, warrant a written reply or RFP amendment will be furnished to all parties receiving this RFP. Metro will not respond to questions received after 4 p.m. on Thursday, February 17, 2011.

D. Information Release

All Proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a proposal all Proposers agree to such activity and release Metro from all claims arising from such activity. In Accordance with Oregon Public Records Law (ORS 192), proposals submitted will be considered part of the public record, except to the extent they are exempted from disclosure.

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E. Minority, Women and Emerging Small Business Program

In the event that any subcontracts are to be utilized in the performance of this agreement, the Proposer's attention is directed to Metro Code provisions 2.04.100, which encourages the use of minority, women and emerging small businesses (MWESB) to the maximum extent practical. Copies of these MWESB requirements are available from the Metro Procurement Office, 600 NE Grand Avenue Portland, OR 97232, (503) 797-1816.

VII. PROPOSAL CONTENTS

The proposal must contain no more than 12 (twelve) pages of written material describing the consultant's ability to perform the work requested, as outlined below.

A. Transmittal Letter: Indicate who will be assigned to the project, who will be project manager, and that the proposal will be valid for 90 days.

- Firm, consultant or name of business
- Account representative/project manager assigned
- Mailing address, phone, web site and email address
- State or federal certification, if any, as a minority-owned, women-owned or emerging small business, or DBE
- Statement that the proposal will be valid for ninety (90) days
- Signature of authorized representative of the firm, consultant or business.

---One (1) Page

B. Staffing/Project Manager Designation: Identify specific personnel assigned to major project tasks, their roles in relation to the work required, percent of their time on the project and special qualifications they may bring to the project. Include résumés of individuals proposed for this contract in the appendices, if needed.

Metro intends to award this contract to a single firm to provide the services required. Proposals must identify a single person as project manager to work with Metro. The consultant must assure responsibility for any sub-consultant work and shall be responsible for the day-to-day direction and internal management of the consultant effort. The consultant must disclose any sub-contractors used. A change in sub-contractors by the Consultant will be disclosed to Metro as a change order to the contract.

---Two (2) Pages

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- C. Approach/Project Work Plan: Describe how the work will be done within the given timeframe and budget, as outlined in sections III of this RFP. Include a proposed work plan and schedule.

---Two (2) pages

- D. Experience: Use previous work samples and campaigns to show how firm meets requirements listed in Section III and IV. Please submit three projects/campaigns conducted over the past five years that involved services similar to the services required. To do this, for each campaign/project describe the following on a one-page, typed cover sheet:

- the project/case study
- references for each project—the client's name, title, role on the project, email address and telephone number.
- identify employees/persons on the proposed project team who worked on each of the other projects listed, and list their respective roles.

To the cover sheet, attach relevant work samples that relate to each project/campaign, such as:

- Print collateral pieces or other relevant work samples (up to 5 pieces per project) related to the execution of the project or campaign that showcase graphic design; writing and editing in both English and Spanish, if applicable; communication strategy, including messaging strategies, outreach strategies, ad campaigns or tactics, online and print communication pieces and videos. Links to online portfolios, or a CD/DVD. Examples can be returned to Proposer if indicated in transmittal letter.

---Up to Three (3) work sample packets. Packets include One (1) typed cover page with attached work samples (up to Five (5) pieces).

- E. Cost/Budget: Present the proposed cost of the project and the proposed method of compensation including but not limited to hourly rates for personnel assigned to the project and commission-based compensation, as applicable; total personnel expenditures; support services; subcontractor fees, if applicable. Requested expenses should also be listed. Metro has established budget not to exceed \$90,000 for this project, including media buys and printing. Metro to pay print vendors directly for collateral. Present the proposed cost of the project and method of compensation.

---One (1) page

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F. Diversity:

- **Work Force Diversity** – Describe your work force demographics (number of employees, race and gender) and the measurable steps taken to ensure a diverse work force, including company policies and practices that promote the hiring and retention of women and ethnic minorities.

- **Diversity in Contracting** – Describe your history of working with diverse firms, including any MWESB-certified firms. Describe a project for which you worked with minorities, women or emerging small businesses. Please provide the project name, method used to achieve participation – for example, joint ventures, subcontracts or purchase of equipment or supplies from a certified firm – and the dollar amount or percentage of the project budget expended on such participation.

- **Diversity of Firm** – Describe the ownership of your firm (e.g., fully minority owned) and whether or not your firm is certified by the State of Oregon as an MBE, WBE or ESB. Provide certification number, if applicable.

--- Two (2) Pages (for Section F)

- F. Exceptions and Comments: To facilitate evaluation of proposals, all responding firms will adhere to the format outlined within this RFP. Firms wishing to take exception to, or comment on, any specified criteria within this RFP are encouraged to document their concerns in this part of their proposal. Exceptions or comments should be succinct, thorough and organized. **NOTE:** Any objections or negations regarding the attached proposed contract (pages 17-35), must be raised in this section of the proposal. Objections to the contract may not be made at the time the contract is awarded.

-- One (1) Page

VIII. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.

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- B. Billing Procedures: Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. Contractor's invoices shall include an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Metro shall pay Contractor within 30 days of receipt of an approved invoice.
- C. Validity Period and Authority: The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.
- D. Conflict of Interest. A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.
- E. Equal Employment and Nondiscrimination Clause Metro and its contractors will not discriminate against any person(s), employee or applicant for employment based on race, color, religion, sex, national origin, age, marital status, familial status, gender identity, sexual orientation, disability for which a reasonable accommodation can be made, or any other status protected by law. Metro fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. For more information, or to obtain a Title VI Complaint Form, see www.oregonmetro.gov.
- F. Intergovernmental Cooperative Agreement (Requires competitive solicitation) – Pursuant to ORS 279A and the Metro public contract code, Metro participates in an Intergovernmental Cooperative Purchasing program by which other public agencies shall have the ability to purchase the goods and services under the terms and conditions of this awarded contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to Metro under this agreement. Any estimated purchase volumes listed herein do not include volumes for other public agencies, and Metro makes no guarantee as to their participation in any purchase. Any bidder may decline to extend the prices and terms of this solicitation to any or all other public agencies upon execution of this contract. Unless the bidder specifically declines to participate in the program by marking

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the box on the contract declining to participate, the bidder agrees to participate in the Intergovernmental Cooperative Purchasing program.

- G. Federal clause Agency must be willing to adhere to the guidelines associated with federal funding. See Appendix A for details.

IX. EVALUATION OF PROPOSALS

- A. Evaluation Procedure: Proposals received that conform to the proposal instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. Interviews may be requested prior to final selection of one firm.
- B. Selection Criteria and Process: Selection will be based on an overall evaluation and assessment of the information submitted in the proposal, including the factors listed below. Interviews with those most qualified may be conducted as a final measure of qualifications at the sole discretion of Metro. Metro reserves the right to retain an outside third party to assist with screening and evaluation of proposals. Selection criteria of the proposals and any oral interviews (if conducted) will include the following items and points as indicated below.
- C. Evaluation Criteria: This section provides a description of the criteria that will be used in the evaluation of the proposals submitted to accomplish the work defined in the RFP. Evaluation categories and maximum available points per section – toward a total possible score of 100 – are as follows:
- Transmittal letter and following submission guidelines – 5 points.
Full points will be awarded to consultants who follow the submission guidelines described above and follow Metro's preferred Sustainability practices discussed above.
 - Project Staffing – 15 points.
Proposal will be evaluated for management and organizational capabilities, particularly regarding staff responsiveness and resources to meet the project timeline and provide the services required in the Scope of Work section of the RFP and feedback from any referenced contacts.
 - Approach – 15 points.

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- Experience – 35 points.
Evaluation of demonstrated experience and ability to provide services as identified in the Scope of Work. Includes experience; qualifications and certifications of key staff identified in the proposal; quality and relevance of submitted samples; and projects similar in type and scope that have been completed by the firm in the last five years. Previous experience with Metro projects is not a requirement, but proposal should exhibit familiarity with Metro's mission, focus and typical project types
- Budget/Cost Proposal – 20 points.
The submitted fee structure will be compared to fee schedules proposed by other firms and evaluated on information available regarding current market costs for comparable services as determined by Metro.
- Diversity and M/W/ESB Subcontractor Utilization Plan – 10 points.
Successful firms should demonstrate recruitment plans in place to promote workforce diversity and utilization of the State of Oregon certified M/W/ESB subcontractors. Efforts made toward maximizing M/W/ESB firms as subcontractors on the specific project covered by the RFP will also be taken into consideration as part of the evaluation criteria.

X. APPEAL OF CONTRACT AWARD

Aggrieved proposers who wish to appeal the award of this contract must do so in writing within seven (7) days of issuance of the notice of intent to award by Metro. Appeals must be submitted to Darin Matthews, Procurement Officer, 600 NE Grand, Portland, Oregon 97232 and must state the specific deviation of rule or statute in the contract award. Metro will issue a written response to the appeal in a timely manner.

XI. NOTICE TO ALL PROPOSERS -- STANDARD AGREEMENT

The attached personal services agreement is a standard agreement approved for use by the Office of Metro Attorney. This is the contract the successful Proposer will enter into with Metro; it is included for your review prior to submitting a proposal.

Personal Services Agreement

Metro Contract No. ____

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, and Vendor, referred to herein as "Contractor," located at _____.

A. Recitals

1. Metro is the recipient of Federal Transit Administration (FTA) Congestion Mitigation and Air Quality (CMAQ) funds, and wishes to enter into this Agreement with the Contractor, utilizing these federal funds.
2. Metro considers the Contractor to be a vendor compensated with federal funds . Funding for this project is obtained from an Agreement between Metro and the FTA, utilizing Congestion Mitigation and Air Quality (CMAQ) funds, CFDA No. 20.507.
3. The Regional Travel Options Program, hereinafter referred to as the "RTO Program" is a program of Metro designed to assist local governments in managing demand on the transportation system and increasing use of travel options.

B. Effective Date and Duration

The beginning date of this Agreement is _____, and shall remain in effect until and including _____, unless terminated or extended as provided in this Agreement. Costs incurred after _____, which are deemed allowable costs for this project, will be reimbursed once all parties have signed this Agreement and Metro has been presented with the appropriate invoice and documentation.

C. Scope of Work

Contractor shall provide all services and materials specified in the attached "Exhibit A – Scope of Work," which is incorporated into this Agreement by reference. Contractor in accordance with the Scope of Work shall provide all services and materials, in a competent and professional manner. To the extent that the Scope of Work contains additional Agreement provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.

D. Compensation

The total Agreement amount is _____ **AND NO/100TH's DOLLARS (\$_____.00)** which is comprised of the maximum amount of FTA funds to be dispersed to the Contractor not to exceed _____ **AND NO/100TH's DOLLARS (\$_____.00)** and local match provided by Contractor (change according to specific Agreement) of _____ **AND NO/100TH's DOLLARS (\$_____.00).**

Qualified costs are direct project costs, incurred by the Contractor and personal services contractor(s) during the term of this Agreement that are eligible for federal funds.

The Contractor shall present cost reports, reimbursement requests and progress reports to Metro's RTO Administrator on a monthly basis. The Contractor shall not submit requests for payments that exceed _____ **AND NO/100TH's DOLLARS (\$_____.00)**, unless otherwise authorized to do so by future amendments to this Agreement. Invoices shall display one hundred

Personal Services Agreement

percent (100%) of the total project costs incurred during the period of the invoice, and identify any required matching amounts, if applicable. *Documentation, when requested, must be received by Metro before payment will be made, and may include copies of receipts for expenditures, timesheets, or system-generated accounting reports documenting the actual expense.*

E. Subcontracts and Assignment – Successors and Assigns

1. Contractor shall not enter into any subcontracts for any of the Services required by this Agreement, or assign or transfer any of its interest in this Agreement, without Metro's prior written consent. In addition to any other provisions Metro may require, Contractor shall include in any permitted subcontract under this Agreement a requirement that the subcontractor be bound by Sections E, G, I and O of this Agreement as if the subcontractor were the contractor. Metro's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Agreement. Payment under the terms of this Agreement will be made to the Contractor and subcontractors have no right to payment directly from the Metro.

2. Contractor agrees to include adequate provisions in their agreements with their subcontractors to ensure compliance with those Federal laws, regulations, and directives as directed by the FTA Master Agreement Section 2(e).

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.

F. Records Maintenance – Access

Contractor shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Metro, the FTA, the Comptroller General of the United States and/or their duly authorized representatives shall have access to such fiscal records and other books, documents, timesheets, papers, plans and writings of Contractor that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, timesheets, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

G. Liability and Indemnity

Contractor is an independent contractor and assumes full responsibility for its performance and assumes full responsibility for all liability for bodily injury or physical damage to persons or property arising out of or related to this Agreement, Contractor shall indemnify, defend and hold harmless Metro, its elected officials, officers, employees and agents, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, whether before the commencement of litigation at trial or on appeal, arising out of or in any way connected with its performance of this Agreement. Contractor is solely responsible for paying Contractor's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and Metro. Contractor is solely responsible for the acts and omissions of its' agents, employees, subcontractors, and/or representatives and for all claims.

Personal Services Agreement

H. Termination

Metro may terminate this Agreement upon giving Contractor seven (7) days' written notice. In the event of termination, Contractor shall be entitled to payment for goods received prior to the date of termination. Metro shall not be liable for any indirect or consequential, or any other damages whatsoever. Termination by Metro shall not waive any claim or remedies it may have against Contractor.

I. Insurance

1. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:

a. Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability, shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage; and

b. Automobile bodily injury and property damage liability insurance coverage shall be a minimum of 1,000,000 per occurrence.

2. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro thirty (30) days prior to the change or cancellation.

3. Contractor, its subcontractors, if any, and all employers working 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 for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit C, in lieu of the certificate showing current Workers' Compensation.

4. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and thirty (30) days advance notice of material change or cancellation.

5. Contractor shall provide Metro with a Certificate of Insurance complying with this article, and naming Metro as an additional insured within fifteen (15) days of execution of this Agreement, or twenty-four (24) hours before services under this Agreement commence, whichever date is earlier.

J. State and Federal Law Constraints

Both parties shall comply with the public contracting provisions of ORS chapters 279A, 279B and 279C and the recycling provisions of ORS 279B.025 to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

Personal Services Agreement

K. Attorney's Fees

In the event of any litigation concerning this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

L. Quality of Goods

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. Contractor guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by Metro, whichever is later. All guarantees and warranties of goods furnished to Contractor or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of Metro.

In addition to any express warranties provided by the Contractor, all implied warranties covered by ORS Chapter 72 shall apply to any goods provided under this Agreement, and are hereby expressly not disclaimed.

M. Safety

If services of any nature are to be performed in connection with the provision of goods pursuant to this Agreement, Contractor shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits. All applicable Material Safety Data (MSD) sheets shall accompany the goods.

N. Right to Withhold Payments

Metro shall have the right to withhold from payments due Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

O. Compliance

1. This Agreement is subject to a financial assistance Agreement between Metro and the Federal Transit Administration (FTA). Contractor shall comply with all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof: (1) the terms and conditions applicable to a "recipient" set forth in the October 1, 2008 FTA Master Agreement [FTA MA 15] between Metro and the FTA; (2) 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; (3) 2 CFR 225, Cost Principles for State, Local, and Indian Tribal Governments; and (4) FTA Circular 5010.1D.

2. Contractor shall also comply with federal, state, and local laws, statutes, and ordinances relative to, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

P. Integration of Contract Documents

Personal Services Agreement

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Agreement are hereby expressly incorporated by reference. Otherwise, this Agreement represents the entire and integrated Agreement between Metro and Contractor and supersedes all prior negotiations, representations or Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Metro and Contractor. The law of the state of Oregon shall govern the construction and interpretation of this Agreement.

Q. Assignment

This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

R. Ownership of Documents

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

S. Project Information

Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

T. Independent Contractor Status

Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

U. Situs

The situs of this Agreement is Portland, Oregon. Any litigation over this Agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

Personal Services Agreement

V. No Waiver of Claims

The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

W. Modification

Notwithstanding and succeeding any and all prior Agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

CONTRACTOR, BY EXECUTION OF THIS AGREEMENT TO AGREE, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS AGREEMENT TO AGREE, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Contractor

Metro

By _____

By _____

Title _____

Title _____

Date _____

Date _____

Exhibit A – Scope of Work

(PROJECT SCOPE AND BUDGET TO BE INSERTED HERE FOR ACTUAL CONTRACT)

Exhibit B – Federal Clauses

Contracts (\$100,000 and over)

The Contractor agrees to comply with all applicable Federal Clauses as outlined in the **October 1, 2010 FTA Master Agreement [FTA MA 17]** including, but not limited to, the following:

- A. Federal Laws, Regulations, and Directives. The Recipient agrees that Federal laws and regulations control Project award and implementation. The Recipient also agrees that Federal directives, as defined in this Master Agreement, provide Federal guidance applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Recipient understands and agrees that unless the recipient requests FTA approval in writing, the Recipient may incur a violation of Federal laws or regulations, its Grant Agreement or Cooperative Agreement, or this Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Recipient understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Recipient on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Recipient executes the Grant Agreement or Cooperative Agreement for the Project, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal laws, regulations, and directives will apply to the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Recipient signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. To accommodate changing Federal requirements, the Recipient agrees to include in each agreement with each subrecipient, each lease, each third party contract, and other similar document implementing the Project notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in this Master Agreement are minimum requirements, unless modified by FTA. *[FTA Master Agreement §2.c(1)]*

- B. No Federal Government Obligations to Third Parties. In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any subrecipient, lessee, third party contractor, or other participant at any tier of the Project.. *[FTA Master Agreement §2.f]*
- C. Debarment and Suspension. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. The Recipient agrees to, and assures that its subrecipients, lessees, third party contractors, and other participant at any tier of the Project will, review the "Excluded Parties Listing System" at

Exhibit B – Federal Clauses

Contracts (\$100,000 and over)

<http://epls.gov/> before entering into any third subagreement, lease, third party contract, or other arrangement in connection with the Project.

D. Lobbying Restrictions. The Recipient agrees that:

(1) In compliance with 31 U.S.C. § 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement or Cooperative Agreement;

(2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

(3) It will comply, and will assure the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352. *[FTA Master Agreement §3.d]*

E. False or Fraudulent Statements or Claims. The Recipient acknowledges and agrees that:

(1) Civil Fraud. 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 the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate. *[FTA Master Agreement §3.f]*

F. Access to Records of Recipients and Subrecipients. The Recipient agrees to permit, and require its subrecipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its subrecipients pertaining to the Project, as required by 49 U.S.C. § 5325(g). *[FTA Master Agreement §8.d]*

G. Right of the Federal Government to Terminate. Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the

continuation of Federal assistance for the Project. The Recipient understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Recipient before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project. *[FTA Master Agreement §11]*

- H. **Civil Rights.** The Recipient agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:
- a. **Nondiscrimination in Federal Public Transportation Programs.** The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
 - b. **Nondiscrimination – Title VI of the Civil Rights Act.** The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient agrees to follow all applicable provisions of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” May 13, 2007, and any other applicable Federal directives that may be issued.
 - c. **Equal Employment Opportunity.** The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:
 - (1) **General.** The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Exhibit B – Federal Clauses

Contracts (\$100,000 and over)

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as “construction,” the Recipient agrees to comply and assures the compliance of each subrecipient, lessee, third party contractor, or other participant, at any tier of the Project, with all applicable equal employment opportunity requirements of 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 No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, and also with any Federal laws and regulations in accordance with applicable Federal directives affecting construction undertaken as part of the Project.

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subrecipient, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:

(1) The Recipient agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. Part 26.

(2) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Recipient’s DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that implementation of its approved DBE program is a legal obligation, and that failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and the Master Agreement. Upon notification by U.S. DOT to the Recipient of the Recipient’s failure to implement its approved DBE program, U.S. DOT may impose sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 et seq., or both.

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

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(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. Part 1625.

g. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (1) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194;
- (10) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and

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- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.
- h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 et seq., and any amendments thereto.
- i. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005.
- j. Environmental Justice. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.
- k. Other Nondiscrimination Laws. The Recipient agrees to comply with all applicable provisions of other Federal laws and regulations, and follow applicable Federal directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing. *[FTA Master Agreement §12]*
- I. Fly America. The Recipient understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143. *[FTA Master Agreement §14(c)]*
- J. Federal Standards. The Recipient agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and other procurement requirements of Federal laws in effect now or as amended to the extent applicable; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Recipient also agrees to follow the provisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," November 1, 2008, and any later revision thereto, except to the extent FTA determines otherwise in writing. The Recipient agrees that it may not use FTA assistance to support its third party procurements unless there is satisfactory compliance with Federal laws and regulations. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Recipient understands and agrees that the FTA "Best Practices Procurement Manual" is focused on third party procurement processes and examples and may omit certain Federal requirements applicable to specific third party contracts. *[FTA Master Agreement §15(a)]*
- K. Access to Third Party Contract Records. The Recipient agrees to require its third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the

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Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require its third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA. [FTA Master Agreement §15(t)]

L. Patent Rights.

a. General. If any invention, improvement, or discovery of the Recipient or of any subrecipient, lessee, any third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

b. Federal Rights. The Recipient agrees that its rights and responsibilities, and those of each subrecipient, each lessee, each third party contractor, or any other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, third party subcontract, or arrangement, as specified in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401 (implementing 35 U.S.C. §§ 200 et seq.), irrespective of the status of the Recipient, subrecipient, lessee, third party contractor or other participant in the Project (i.e., a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, individual, etc.). [FTA Master Agreement §17]

M. Rights in Data and Copyrights.

a. Definition. The term "subject data," as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data," as used in this Section 18, does not include financial reports, cost analyses, or other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:

(1) Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Subsection 18.b(1) of this Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.

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Contracts (\$100,000 and over)

c. Federal Rights in Data and Copyrights. The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Master Agreement. As used herein, “for Federal Government purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a Recipient, subrecipient, lessee, third party contractor, or other participant at any tier of the Project purchases ownership with Federal assistance.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, except to the extent that FTA determines otherwise in writing, the Recipient of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of this Master Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed with Federal funds for capital Projects.

e. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

f. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

g. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project.

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Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked “Proprietary” or “Confidential.”

h. Requirements to Release Data. To the extent required by U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” at 49 C.F.R. § 19.36(d), or other Federal laws or regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or regulation providing access to such records). [*FTA Master Agreement §18*]

N. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws and regulations in accordance with applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:

(1) The Recipient agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, “Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities,” dated September 2, 2005, and in accordance with any applicable Federal directives that may be issued at a later date; to comply with U.S. EPA regulations, “Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 US.C. or the Federal Transit Act,” 40 C.F.R. Part 51, Subpart T; and “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 C.F.R. Part 93, and to comply with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the Recipient agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project: “Control of Air Pollution from Mobile Sources,” 40 C.F.R. Part 85; “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines,” 40 C.F.R. Part 86; and “Fuel Economy of Motor Vehicles,” 40 C.F.R. Part 600.

(3) The Recipient agrees to comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note. [*FTA Master Agreement §25(b)*]

O. Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws and regulations in accordance with applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

(1) The Recipient agrees to protect underground sources of drinking water as provided by the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

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(2) The Recipient agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note. *[FTA Master Agreement §25(c)]*

P. Energy Conservation.

The Recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Recipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C. *[FTA Master Agreement §26]*

Q. Disputes, Breaches, Defaults, or Other Litigation.

The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

- a. Notification to FTA. The Recipient agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform FTA in writing before doing so. Each notice to FTA under this Section 53 of this Master Agreement shall be provided, at a minimum, to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.
- b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery, except that the Recipient may return any liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.
- c. Enforcement. The Recipient agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.
- d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.
- e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate. *[FTA Master Agreement §53]*

CERTIFICATION REGARDING LOBBYING

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

Signature of Contractor's Authorized Official

Name (Printed)

Title

Date

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION

(1) The prospective participant certifies that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date _____

Signature _____

Company Name _____

Title _____