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# **Metro Pioneer Cemeteries:**

## **Operations and market assessment, business plan recommendations and financial pro forma**

### **RFP 11-1850**

#### **Metro Parks and Environmental Services**

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

#### **Project Manager**

Rachel Fox, Cemetery Program Manager  
503-797-1856  
[Rachel.fox@oregonmetro.gov](mailto:Rachel.fox@oregonmetro.gov)

#### **Procurement Analyst**

Karen Slusarenko  
503-797-1809  
[Karen.slusarenko@oregonmetro.gov](mailto:Karen.slusarenko@oregonmetro.gov)

Notice is hereby given that proposals for RFP 11-1850 for Metro Pioneer Cemeteries Business Plan shall be received by Metro, Attn: Karen Slusarenko, 600 N.E. Grand Avenue, Portland OR 97232 until close of business, March 11, 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 CONDITIONS.

# Request for Proposals

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## I. INTRODUCTION

Parks and Environmental Services 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 Metro Pioneer Cemeteries Business Plan. Proposals are due no later than close of business on March 11, 2011, in Metro's business offices at 600 NE Grand Avenue, Portland, OR 97232-2736 with attention to Karen Slusarenko, Procurement Analyst.

The work detailed in this RFP will be one component of a more extensive, on-going assessment of Metro's Pioneer Cemetery Program ([www.oregonmetro.gov/cemeteries](http://www.oregonmetro.gov/cemeteries)). The State of Oregon Revised Statutes, Chapter 97 requires Metro to care for fourteen individual pioneer cemeteries located throughout Multnomah County, Oregon. The Proposer, with the help and expertise of Metro staff, will inform the Metro Pioneer Cemetery Business Plan project process through the preparation of a business plan, analysis of existing and potential capital facilities renovations, and operation and maintenance recommendations for the cemeteries. Metro is undertaking this project to maximize short-and-long term operational goals and funding strategies. At the end of this project, Metro will incorporate these findings and recommendations, as well as other relevant information, to develop clear fiscally-sound operations. Metro will also consider investment strategies for capital improvements for the cemeteries. It is Metro's intention to develop a more efficient, sustainable operation that better represents the Metro brand and is more responsive to community needs.

### Metro's Project Goals

- Develop a strategic business plan to inform Metro's senior leadership and Metro Council on future operation alternatives with specific examples of similar operations in Oregon and in the US and specifically identify operations and site conditions, and provide options for improved management of the program. The plan should identify marketing and investments that will enhance the life of the program and generate future revenues. The business plan shall include financial pro formas for future operations, investments and risks.

### Additional Considerations

- Work related to Metro's Intertwine Initiative, the potential to create a cemetery district, Lone Fir Cemetery – Block 14 Memorial Park, and Lone Fir Cemeteries master plan will be taking place concurrently by Metro staff, outside stakeholders and other consultants over the course of the project.
- Metro values sustainability in facility operations, and strives to be a model for sustainable business practices. To this end, Metro has adopted long-term sustainability goals for internal operations which are to be met by 2025 (See Appendix A). Metro envisions meeting these sustainability goals by integrating sustainable practices and systems into the Cemeteries policies, procedures, maintenance and operations now and in the future.
- In 2008, Metro contracted with Lango Hansen Landscape Architecture to perform a Master Plan for Lone Fir Cemetery – Block 14 and a cursory level evaluation of the current condition of the Lone Fir Cemetery. They provided limited recommendations on the condition of the cemetery, infrastructure and capital assets. (See Appendices B & C).

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Salmon-Safe's rigorous certification for grounds maintenance will ultimately be sought for Metro's cemeteries. To understand requirements for certification (See Appendix D).

Metro will provide all appendices on the following FTP website:  
[ftp://ftp.oregonmetro.gov/dist/parks/RFP\\_11-1850/](ftp://ftp.oregonmetro.gov/dist/parks/RFP_11-1850/)

## II. BACKGROUND/HISTORY OF PROJECT

Metro, the regional government that serves 1.5 million people who live in the 25 cities and three counties of the Portland metropolitan area, provides planning and other services that protect the nature and livability of our region. For more information, visit ([www.oregonmetro.gov](http://www.oregonmetro.gov)). Metro's Pioneer Cemeteries offer the region 64 acres of quiet reflection rich in art, architecture and poetry, and sustains the memory of a diverse population of Oregon residents. What were once simple unplanned burial grounds have evolved into park-like spaces reflecting the character of the region today.

Metro's 14 Pioneer Cemeteries were established from as early as 1837 through the early homesteading period (circa 1850-1870) and are spread throughout Multnomah County, Oregon. During that time, single family burial plots often became private community cemeteries. As the years passed, caretaking responsibilities were often handed down to family descendants, and as the cemeteries grew, to private cemetery associations. None of the cemeteries had perpetual maintenance funds. Instead, they relied on continuing grave sale revenue and charitable giving for maintenance funding. Over the intervening decades, care of pioneer cemeteries became inconsistent and some were abandoned to revert back to nature. After many years of such benign neglect, the Oregon Legislature mandated public care of 14 of the Pioneer Cemeteries remaining in Multnomah County through a series of mid-century legislative enactments. Multnomah County received ownership of the cemeteries without any perpetual care funding, but was tasked with assuring proper perpetual maintenance of the facilities. With ownership, the County inherited a set of inconsistent and sometimes incomplete cemetery records.

In 1994, Multnomah County transferred ownership of the Pioneer Cemeteries to Metro, along with the same state mandate to care for them in perpetuity. As Metro became more familiar as a steward of these properties, it became clear that the approximately 55,000 interment records and 8,000 pre-arrangement records transferred to Metro had been poorly maintained for over 100 years.

### A. Inventory

Metro has conducted a cemetery records management improvement plan and is reviewing and recording 65,000 records digitally to create an electronic database that will track future business operations. In addition, it has now compiled a complete inventory of available graves and encroachments and also preserved historic interment books.

Until recently, Metro finance had estimated that the Metro Pioneer Cemeteries Program could be maintained by grave sale revenues until 2058. However, the Cemetery Records Management Improvement Plan has determined that Metro's available grave inventory is actually half of the program's earlier estimates. Past estimates identified 9,000 available graves and approximately 200 grave sales per year. With closer scrutiny of the program, it has been determined that almost all the graves in Lone Fir (Metro's most requested cemetery) are either owned, occupied or contain some type of encroachment (tree, curbing, askew burial).

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## **B. Perpetual Care Fund**

In 2004, Metro created the Pioneer Cemetery Perpetual Care Fund. This fund is intended to provide financial support for the long-term maintenance of the Metro Pioneer Cemeteries after the cemeteries are no longer generating revenue from grave sales and burial services. A resolution was adopted by Metro Council that made the fund permanent and restricted its use to this purpose. The fund receives revenue from a 15 % surcharge on grave sales. No expenditures are anticipated from this fund until sales of grave sites are exhausted at the cemeteries.

This reduction in inventory, coupled with the closure of Lone Fir Cemetery reduces projections for growth of the cemetery perpetual care fund. Market research indicates that Metro's rates are the lowest in the region with the program operating with a \$100,000 annual deficit. The Cemetery Perpetual Care Fund currently has just \$287,000 on account. If all sales were to stop today, Metro would have funds to maintain and care for the day-to-day upkeep of the properties for approximately four to five years. However, Oregon law mandates that Metro must continue to steward these properties in perpetuity and is only able to transfer ownership to another public agency.

## **III. PROPOSED SCOPE OF WORK/SCHEDULE**

Proposals should evaluate the inventory, cemetery market, site conditions, capital improvements, operating cost assumptions and revenue assumptions in order for Metro to make key decisions regarding the future of its cemetery program.

### **A. Technical Proposal**

- 1.) Research trends, legislative, regulatory and similar operations
- 2.) Operations
- 3.) Marketing and Investment
- 4.) Finances and Risk

#### **TASK 1 – RESEARCH AND ANALYSIS**

- Research and analyze a summary of the most common operating structures for public cemeteries and the pros and cons of each, with special emphasis on cemeteries that are in a perpetual care state. Then provide a recommendation of what would work best for Metro given our current structure and situation.
- Conduct policy research for standards of practice for the amount of cremains and full body burials in a standard adult sized full body grave space.
- Regulatory Tools: Identify state and local policy areas in comparison to other states and jurisdictions, and provide feedback on options for Metro to work with the Oregon State legislature for changes.
- Identify the critical elements and key resources needed to improve Metro's operations and prioritize the strategic plans for public investment. This shall be conducted by providing a SWOT analysis with regard to Metro's standing as a public agency in the Portland metro area and categorize the analysis in high-medium-low risk solutions with associated costs and time frames for implementation.
- Identify suitable care for grounds, records and monuments, taking into account that Metro does not use fertilizer or pesticides in its regular ground care maintenance.

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- Public Uses: Research other public uses that may be viable for the cemeteries, such as arts and culture programming, filming, photography, historic tours, donor benches and pet loss etc.
- Research ongoing public role in support of the pioneer cemeteries.

## TASK 2 - FACILITY ASSESSMENT AND OPERATIONS

Complete cemetery landscape redesigns are not needed. However, the scope for these tasks should include analysis or consideration of the unplanned cemetery designs and changes or enhancements identified in the market assessment and that directly affect the business recommendations. This will not preclude future studies. The objective of this work is to perform a comprehensive operational review of Metro's cemetery program to provide Metro with an analysis of the program's strengths and weaknesses and clearly identify the types of changes, improvements and level and scale of investments needed. Analysis will be based on the assumption of long-term management, and ideally would result in improved revenue performance and site improvements. A comprehensive evaluation of Metro's cemetery operations, management, physical conditions and capital needs will inform Metro's development of a recommended business plan, finance model and proposed marketing concepts. The consultant will produce a final report with findings and recommendations generated from this operational and business review and analysis.

Key assumptions for this work include:

- Initial assessments and recommendations should focus on providing big picture information and broad forecasts. The need for more detailed analysis for specific areas or recommendations may then be identified and/or requested by the Metro project team.
- Metro will provide mapping information as available to the last recorded plat or aerial images.

This report will:

- Detail a recommended business plan addressing items described in Task 3 below
- Describe the condition of the facilities, related challenges, opportunities, and trade-offs. This will include boundary walls, curbing, grading, asphalt, gates, signage, large monuments and categorizing these needs based Urgent, Necessary and Desirable. Urgent projects will be those that serve as a public safety hazard or that must be done due to high level of deterioration and recommend prioritization of investments.
- Provide practical solutions, best management practices and innovative planning techniques for improved operations.
- Include organizational considerations or structure of potential operating entity (non-profit, special purpose, holding company, etc.)
- Provide an integration plan for Salmon Safe certification.
- Outline costs of various operational recommendations and possible sources of future funding.
- Outline best practices to the current management structure.

## TASK 3 - MARKETING AND INVESTMENT

These findings will be used to inform business strategies and/or capital investment recommendations that would potentially develop a niche market and/or increase the program's profitability. Thus, the consultant should note impending or proposed changes to cemeteries in the Greater Portland region – including but not limited to, Riverview Cemetery, Lincoln Memorial, Finley's Sunset, Valley Memorial,

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Milwaukie Pioneer, Mt. Calvary and Rose City. Indicate how those changes might affect underlying business assumptions for Metro's program. The final report will detail current and projected trends for national and local cemetery markets related to grave sales, grave opening and closing fees, final disposition trends and future park-like uses. The plan should include characterization of target market groups and related strategies that offer the best potential to maximize revenue. It will also include local market information such as demographics, grave plot fee survey, burial projections and rates, proposed improvement projects, closures and performance data at other cemeteries, if known. Please note that not all of Metro's properties are suitable for investment dependent upon location, size and space availability.

- Provide marketing concepts for Metro's "naturescaped" cemeteries and Salmon Safe certifications.
- Provide marketing guidance that identifies opportunities to incorporate the Metro brand identity into the operation of the facilities.
- Identify suitable cemeteries in the Metro inventory for the addition of niche walls for cremains, donor benches and pet loss areas.
- Identify suitable cemeteries in the Metro inventory for the addition of a Green Burial area or a cremation "Scatter Garden" keeping in mind Metro's ground maintenance care.
- Determine return on investment with regards to additional niche walls, green burial sections or other marketing and service delivery concepts.
- Provide an industry analysis and description of the relevant market(s) and customers.
- Identify historic resources and how best to incorporate them.

## TASK 4 - FINANCES AND RISK

Conduct Finance and Revenue Analysis for potential niche walls or other new developments such as green burial section (development, build out and operation). Identify funding sources and incentive programs which have proven successful in similar projects.

- Pro Formas-  
 Expenses:
  - a) Provide cost estimates for current deferred maintenance needs, categorized by Urgent, Necessary and Desirable.
  - b) Provide perpetual care maintenance including present care and into the future.
- Revenues:
  - a) Project revenue potential with regard to new programs, current inventory, increased inventory, market adjustment rates.
  - b) Include recommendations on funding options for short and long term capital improvements at the cemeteries with estimated costs and recommended phasing and timeline.
  - c) Review ORS Chapter 97 with regard to the perpetual care surcharge and provide estimates on potential surcharge scenarios and investments to better position Metro to fund the perpetual maintenance of the program.

### **B. Cost Proposal:**

The anticipated cost of the requested services herein is \$40,000 USD. Metro reserves the right to use its own mapping, land use and landscape architect services. The cost proposal shall include proposed costs, and any other rates, amounts or associated cost information. It shall not include any text or narrative that could be

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construed as a qualification of the cost proposed. If the Proposer fails to provide cost information in the required format, Metro shall determine the proposal to be non-responsive and reject it.

In pricing the services the proposal should include the following items:

- Hourly rates to be charged for personnel.
- Cost of materials and supplies.
- Professional services contracts and special services
- Travel and other professional expenses.
- Overhead charges or pass-through costs, if applicable.
- Any other miscellaneous costs to be included in the pricing of the proposal.

**C. Deliverables:**

The consultant will produce a final operations and market assessment, business plan recommendations and financial pro forma report as outlined in Section III Scope of Work, A. Technical Proposal.

- Conduct up to three meetings with Metro staff throughout course of project to discuss/refine draft recommendations, cost estimates, assumptions and renderings.
- Final report to include research, operations & market analysis, investments and Pro Formas. The final report shall be 5 bound hard copies, 1 unbound print ready hard copy, and one digital copy in each Microsoft Office and Adobe Acrobat format, including an Executive Summary/Quick Reference Guide with a written conceptual layout plan and phasing plan for easy distribution. The consultant should create a presentation of the business plan so that Metro staff can use it to inform the Metro Council and outside stakeholders to Metro.

Tasks for the contract to be performed by Metro

- Provide background reference materials and mapping materials.
- Coordinate with all consultants and Metro teams.
- Coordinate access to other consultant work products and deliverables as needed.
- Provide timely feedback on all materials to be reviewed.
- Coordinate with stakeholders and community members.
- Handle all media and public relations requests.
- Accompany consultant on site visits.
- Perform other tasks as negotiated with consultant.

**D. Schedule:**

Metro would like to give a program update to the Metro Council in July, 2011. Below is a draft schedule for the business plan:

February 16, 2011 – March 2, 2011	RFP Solicitation
March 14, 2011 – March 25, 2011	RFP Review period
March 31, 2011	Notice of Intent to Award
April 4 -15, 2011	Contract negotiations
April 18-22, 2011	Project kick off & site visits
April 25-29, 2011	Site visit assessment, demographic research, legislative & Regulatory reviews
May 2-6, 2011	Marketing & investments, financial & risk
May 9-13, 2011	Map, Graphics & draft presentation

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May 16-20, 2011	Metro review of material
May 23-27, 2011	Consultant final draft to Metro
June 2011	Metro project team prep for Council presentation
July 2011	Metro team presents to Council

**IV. QUALIFICATIONS/EXPERIENCE**

Due to the diversity of the metro region’s population, burials in Metro’s 14 Pioneer Cemeteries include members of the community with a variety of cultures and beliefs. Contractor must have cultural sensitivity and knowledge of the local and regional community. Contractor must have a minimum of five (5) years experience in business planning. A brief descriptive statement indicating Proposer’s credentials to be delivered under this RFP as follows:

- A brief description of Proposer’s background and organizational history.
- Years in business.
- Location of offices.
- Whether there have been any mergers, acquisitions, or sales of Proposer’s company within the past five (5) years, and if so, provide an explanation with relevant details.
- A personnel roster of key staff who shall be assigned by Proposer to perform services under this contract.
- Professional resumes of key staff who shall be assigned by Proposer to perform services under this contract.
- No more than three (3) customer references for similar projects of like or larger scale that have been completed and one customer reference for similar projects of like or larger scale that are in progress. Each reference must include: a.) Company name and address b.) Name, title, email address and phone number of company contact knowledgeable about both the project and the quality of service(s) provided c.) A brief description of the project including date services were provided.

The ideal consultant would have prior experience in business and market analysis in the deathcare industry, or would have experience with analysis of governmental business operations. The consultant must have the ability to access sources of information that can provide the necessary level of detail required to create a comprehensive business plan.

**V. PROJECT ADMINISTRATION**

Metro’s project team consists of Rachel Fox, Cemeteries Program Manager who is the project team leader and who can provide background information about the cemeteries with regard to history, customer base, past practices, sales and service. Dan Kromer, Parks Manager who will coordinate with the consultant on property maintenance and Brian Kennedy, Parks and Environmental Services Finance Manager and Pam Peck, Metro Communications Manager.

**VI. PROPOSAL INSTRUCTIONS**

- A. Submission of Proposals - six (6) copies and one digital copy of the proposal shall be furnished to Metro either in a sealed envelope, addressed as shown below or via email. Faxed documents are not allowed.

Metro Parks and Environmental Services

# Request for Proposals

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RFP # 11-1850  
Attention: Karen Slusarenko  
600 NE Grand Avenue  
Portland, OR 97232-2736  
[Karen.slusarenko@oregonmetro.gov](mailto:Karen.slusarenko@oregonmetro.gov)

B. Deadline

Proposals will not be considered if received after close of business on March 11, 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 Karen Slusarenko at (503) 797-1809 or email [Karen.slusarenko@oregonmetro.gov](mailto:Karen.slusarenko@oregonmetro.gov). 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 March 4, 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.

E. Ownership of Documents

All documents, printed or electronically produced as part of this project shall be the property of Metro. Metro shall remain free to copy and edit any and all documents and presentation materials, electronic or otherwise. Electronic documents shall not be locked or password protected and Metro shall retain the ability to edit and update documents, including original word processing, spreadsheet, database and mapping files and resulting Acrobat files.

F. 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 should contain not more than 12 pages of written material (excluding biographies and brochures, which may be included in an appendix), describing the ability of the consultant to perform the work requested, as outlined below. The proposal should be submitted on recyclable, double-sided recycled paper (post consumer content). No waxed page dividers or non-recyclable materials should be included in the proposal.

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

B. **Technical Proposal:** Give a written explanation of your understanding of the intent of this RFP as requested in sections III and IV and the resulting Contract, and why your firm should be selected. Describe your understanding of Metro's cemeteries, site conditions, community partners and heritage and background of the interred. Metro intends to track the performance of the contract and contractor. Describe your understanding of this as it relates to monthly meetings and reports, adhering to the scope of work and responding to Metro in a timely manner. Describe how the work will be done within the given timeframe and budget. Include a proposed work plan and schedule.

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 subconsultant work and shall be responsible for the day-to-day direction and internal management of the consultant effort.

C. **Cost Proposal:** Present the proposed cost of the project and the proposed method of compensation as outlined in section III, B. List hourly rates for personnel assigned to the project, total personnel expenditures, support services, and subconsultant fees (if any). Requested expenses should also be listed.

D. **Experience:** Indicate how your firm meets the experience requirements listed in Section IV. of this RFP. List projects conducted over the past five years which involved services similar to the services required here. For each of these other projects, include the name of the customer contact person, his/her title, role on the project, and telephone number. Identify persons on the proposed project team who worked on each of the other projects listed, and their respective roles.

E. **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 or attached personal services agreement are encouraged to document their concerns in this part of their proposal. Exceptions or comments should be succinct, thorough and organized.

## 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.

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.

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- 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](http://www.oregonmetro.gov).

## 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. Evaluation Criteria: This section provides a description of the criteria which will be used in the evaluation of the proposals submitted to accomplish the work defined in the RFP.

	Percentage of Total Score
<u>Technical Proposal</u>	
Described Approach & Methodology:	
Research & Analysis	15
Facility Assessment & Operations	15
Marketing & Investment	15
Finance & Risk	15
 <u>Experience</u>	 20
 <u>Cost Proposal</u>	
Estimated cost of proposed services	20
	100 pts

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### **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. Metro shall not be required to consider issues raised during the contract negotiation and award phase that were not identified in contractor's proposal.

# Request for Proposals

## Personal Services Agreement

Contract # \_\_\_\_\_

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 N.E. Grand Avenue, Portland, OR 97232-2736, and \_\_\_\_\_, referred to herein as "Contractor," located at \_\_\_\_\_.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective \_\_\_\_\_ and shall remain in effect until and including \_\_\_\_\_, unless terminated or extended as provided in this Agreement.

2. 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. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.

3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed \_\_\_\_\_ AND \_\_\_\_\_/100THS DOLLARS (\$\_\_\_\_\_).

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

(1) 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

(2) automobile bodily injury and property damage liability insurance coverage shall be a minimum of 1,000,000 per occurrence.

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

c. 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 B, in lieu of the certificate showing current Workers' Compensation.

d. 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 30 days' advance notice of material change or cancellation.

e. 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 contract, or twenty-four (24) hours before services under this contract commence, whichever date is earlier.

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5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Ownership of Documents and Maintenance of Records. Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this agreement are Work Products and are the property of Metro, including but not limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon Metro request, Contractor shall promptly provide Metro with an electronic version of all Work Products that have been produced or recorded in electronic media. Metro and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such Work Products.

a. Contractor and subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:

- (1) The performance of the contractor, including but not limited to the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the contractor or subcontractor under the terms of the contract or subcontract;
- (2) Any claims arising from or relating to the performance of the contractor or subcontractor under a public contract;
- (3) Any cost and pricing data relating to the contract; and
- (4) Payments made to all suppliers and subcontractors.

b. Contractor and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.

c. Contractor and subcontractors shall make records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.

d. Contractor and subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.

e. Contractor and subcontractors agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the Contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

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- f. Contractor and subcontractors agree that in the event such records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the Contractor or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from Metro.
- g. Failure of the Contractor or subcontractor to keep or disclose records as required by this document or any solicitation document may result in debarment as a bidder or proposer for future Metro contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the Contractor or subcontractor is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.
7. 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.
8. 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.
9. Right to Withhold Payments. Metro shall have the right to withhold from payments due to 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.
10. 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.
11. 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.
12. 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.
13. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor seven days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

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14. 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.

15. 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.

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METRO

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_