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# **Project Management Services for the Southwest Corridor and Streetcar Methods Projects**

**RFP 13-2267**

**Metro Planning and Development Department**

600 NE Grand Avenue  
Portland, Oregon 97232  
503-797-1700

**Project Manager**

Elissa Gertler  
Elissa.Gertler@oregonmetro.gov  
503-797-1752

**Department Procurement Staff**

Sherrie Blackledge  
Sherrie.blackledge@oregonmetro.gov  
503-797-1724

Notice is hereby given that proposals for **RFP 13-2267** for **Project Management Services for the Southwest Corridor and Streetcar Methods Projects** shall be received by Metro, 600 NE Grand Avenue, Portland, Oregon 97232 until close of business on **Friday, November 16, 2012**. It is the sole responsibility of the proposer to ensure that Metro receives the Proposal by the specified date and time. Proposals may be mailed, delivered, faxed or emailed. Proposers shall review all instructions and contract terms and condition.

# Request for Proposals - Informal (RFP 13-2267)

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## I. INTRODUCTION

The Planning and Development Department 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 **Project Management Services for the Southwest Corridor and Streetcar Methods Projects**. Proposals will be due as indicated on the RFP cover page.

Details concerning the project and proposal are contained in this document.

## II. BACKGROUND/HISTORY OF PROJECT

The purpose of the Southwest Corridor Plan process is to create a framework intended to improve the land use and transportation conditions in the Southwest Corridor, which will in turn stimulate community and economic development, leverage private investments and make efficient use of available resources. The process should provide a transparent, objective and consensus-based framework, as agreed to and further defined by the steering committee, to help define, refine, evaluate, screen and select land use and transportation alternatives.

In addition, the project team will simultaneously develop a Southwest Corridor Implementation Strategy that identifies and prioritizes needed projects to support local aspirations and regional and state goals. The Southwest Corridor Implementation Strategy will create a framework for establishing agreements on local, regional and state actions that will support implementation. The structure will include a robust public engagement process that actively engages citizens in defining community visions and priorities for investment.

The Southwest Corridor Plan process is intended to result in the following products, which may be refined due to the iterative nature of the project and the inter-connectedness of the products:

1. Southwest Corridor Plan (Metro);
2. Southwest Corridor Implementation Strategy (Metro); and
3. Six individual plans:
  - a. Southwest Transportation Plan (Metro, ODOT)
  - b. Southwest Corridor Transit Alternatives Analysis (Metro)
  - c. Barbur Concept Plan (City of Portland)
  - d. Tigard High Capacity Transit (HCT) Land Use Plan (City of Tigard)
  - e. Linking Tualatin (City of Tualatin)
  - f. Sherwood Town Center Plan (City of Sherwood)

### **Southwest Transportation Plan / Southwest Corridor Transit Alternatives Analysis**

The Southwest Transportation Plan and the Southwest Corridor Transit Alternatives Analysis are complementary projects that have typically been done sequentially, and, in the context of the Southwest Corridor Plan, are now being done simultaneously. The two products will be iterative, consistent, and leverage analysis and public engagement. The Southwest Corridor Transit Alternatives Analysis, a subset of the Southwest Transportation Plan, will be led by Metro while the Southwest Transportation Plan will be co-led by ODOT and Metro.

### **Streetcar Methods**

The purpose of the project is to develop a preferred methodology or approach for evaluating the impact of streetcar (and other public investments) on development patterns and measuring the economic development potential of the potential streetcar in future corridors.

Metro, in coordination with project partners (City of Portland, TriMet, Portland Streetcar, Inc. and others to be determined), will develop a tool or analysis method that will look at the development potential and opportunities, expected return on investment, and value capture potential of each corridor and implications for potential capital funding scenarios.

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### III. PROPOSED SCOPE OF WORK/SCHEDULE

Metro is seeking project management services for the Southwest Corridor Transportation Plan and the Streetcar Methods projects.

The Consultant hired will be responsible for managing the Streetcar Methods project. The Streetcar Methods project came about as part of the Lake Oswego to Portland Transit Project. The purpose of the Streetcar Methods project is to develop a methodology or approach for evaluating the increased development potential with an investment in streetcar transit.

The Southwest Corridor Transportation Plan is a subset of the overall Southwest Corridor Plan, which also includes the Southwest Corridor Transit Alternatives Analysis. The Consultant hired will be responsible for co-managing the Southwest Corridor Transportation Plan with the Oregon Department of Transportation. The Consultant will provide management support for the Southwest Corridor Plan and the Southwest Transit Alternatives Analysis. Metro is seeking proposals from qualified consultant to perform the project management services for the following tasks:

1. *Background*
  - a. *Southwest Corridor Plan* – the PM will be responsible for understanding the work that has been done to date and the work plan developed to move the project forward.
  - b. *Streetcar Methods* - the PM will be responsible for working with the project partners to identify and understand the work that has been done to date.
2. *Work Plan*
  - a. *Southwest Corridor Plan* – the Project Manager will be responsible for coordinating the transportation plan with the overall Southwest Corridor Plan and the Southwest Corridor Transit Alternatives Analysis. The Project Manager will be responsible for implementing the Southwest Corridor Plan/Transportation Plan/Alternatives Analysis work plan and schedule. The Project Manager will be responsible for assisting the overall Southwest Corridor Plan Project Manager and the Transit Alternatives Analysis Project Manager regarding strategy and project implementation.
  - b. *Streetcar Methods* – the Project Manager will be responsible for coordinating and implementing the work plan for this project. A draft work plan is being developed. The Project Manager may have an opportunity to modify or revise the work plan. If this work plan is not completed prior to hiring of the Project Manager, the Project Manager will be responsible for completing and implementing the final work plan.
3. *Coordination*
  - a. *Southwest Corridor Plan* – The Project Manager will be responsible for co-managing the transportation plan with ODOT and coordinating the work of an internal Metro team. In addition, the Project Manager will be responsible for coordinating with the overall Southwest Corridor Plan and the Southwest Corridor Transit Alternatives Analysis. The Project Manager will be responsible for attending and presenting (as needed and determined by the Southwest Corridor Plan Project Manager) at various meetings including, but not limited to the Project Team Leader (PTL) meetings, transportation technical advisory meetings and Steering Committee meetings.
  - b. *Streetcar Methods*– the Project Manager will be responsible for coordination efforts with our project partners. This may include (but not limited to) bi-weekly or monthly check-ins with the project partners or advisory groups on status, updates and any issues or concerns. Additionally, the project manager will be responsible for coordinating the internal team at Metro.
4. *Consultant selection and management*
  - a. *Southwest Corridor Plan* – The Project Manager will be responsible for working with the ODOT Project Manager to manage the consultant team (already under contract) and their scope of work and deliverables, as well as verifying monthly invoices.

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- b. *Streetcar Methods* – the Project Manager will be responsible for hiring and selecting a consultant to assist with the project. The Project Manager will also be responsible for managing the consultant's scope, budget and deliverables.
5. *Data collection* – the Project Manager will manage the data collection process. The Project Manager will be responsible for providing and coordinating the data needed or the resources required to provide the necessary data to the project partners and consultants.
6. *Deliverables and quality control (QA/QC)* – the Project Manager will be responsible for ensuring the project deliverables are done on time and within budget. The Project Manager will be responsible for QA/QC of all deliverables.
7. *Status updates* – the Project Manager will be responsible for providing status updates to the Director and Deputy Director on an as needed basis, in coordination with the Southwest Corridor Plan project manager for the Southwest Transportation Plan. Additionally, the Project Manager will be responsible for providing status updates for several quarterly reports: FTA, UPWP and Metro Council updates.
8. *Presentations* – the Project Manager will be responsible for presentations to various stakeholder groups, internal team, project partners and Metro Council.
9. *Southwest Corridor* – In addition to the general scope items listed above, the Project Manager will also be responsible for managing the following tasks:
  - a. *Project refinement* - the Project Manager will work with the project team to bundle or consolidate projects after screening. This will help facilitate the development of specific 'projects' with potential reasonable design options to be considered and to develop the shared investment strategies. The purpose of this task is to refine the projects to move forward to meet the community vision.
  - b. *Early opportunities* – the Project Manager will work with the ODOT and the other project partners to identify early opportunities for implementation and to work with project partners to identify funding to move those projects forward.
  - c. *Draw from community vision* – the Project Manager will be responsible for coordinating and understanding the community vision, in coordination and under the direction of the Southwest Corridor Plan project manager.
  - d. *Shared investment strategies* – the Project Manager will be responsible for coordinating and working with the project partners to identify the shared investment strategies in coordination and under the direction of the Southwest Corridor Plan project manager.
  - e. *Evaluation and final refinement* – the Project Manager is responsible for coordinating the technical analysis and evaluation of the shared investment strategies in coordination and under the direction of the Southwest Corridor Plan project manager. This includes understanding and presenting evaluation results for land use, environmental and transportation analysis. The Project Manager is responsible for coordinating any refinements to the shared investment *strategies to identify the final set of projects and strategies for implementation.*
  - f. *Implementation strategy* – the Project Manager will be responsible for coordinating and working with the overall project manager, the transit alternatives project manager and the project partners to identify a reasonable implementation strategies that includes a short, mid and long term timeframe, responsibilities and plan amendment schedules.
10. *Streetcar Methods* – In addition to the general scope items listed above, the Project Manager will also be responsible for managing the following tasks:
  - a. *Test case selection* – the Project Manager will work with the project partners to agree on the corridors to be included in this project for analysis and testing.
  - b. *Development* – the Project Manager will be responsible for managing the methods to evaluate the effectiveness of the streetcar corridor economic development analysis tool. The Project Manager will provide the technical support in the development of the methods and the evaluation/analysis.
  - c. *Testing* – the Project Manager will manage the application of the methodology to analysis the development potential of the streetcar within the agreed upon corridors as a test case.

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## Budget and Schedule

The budget for this services contract is not to exceed \$90,000.

Consulting work will begin this fall (2012) and will extend through June 30, 2013. The Consultant hired for these services will be expected to work on this project on an average of 32 hours per week (four days per week) during this duration.

The term of the contract is anticipated to be December 2012 through June 2013.

## IV. QUALIFICATIONS/EXPERIENCE

Proposers shall have the following experience:

- (1) Project management
- (2) Corridor planning
- (3) Alternatives analysis
- (4) Streetcar planning
- (5) Transit oriented development
- (6) Real estate/market analysis

## V. PROJECT ADMINISTRATION

Elissa Gertler, Metro's project manager, will administer the project. Proposer shall identify one point of contact for the resulting contract.

## VI. PROPOSAL INSTRUCTIONS

### A. Submission of Proposals

Metro recommends proposal submission be emailed to [Sherrie.blackledge@oregonmetro.gov](mailto:Sherrie.blackledge@oregonmetro.gov) or faxed to 503-797-1930. However, **six (6) copies** of the proposal can be mailed or hand-delivered to Metro, addressed to:

Metro  
Planning and Development Department  
Attention: Sherrie Blackledge RFP 13-2267  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

### B. Deadline

Proposals will not be considered if received after the date and time indicated on the RFP cover page.

### 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 [sherrie.blackledge@oregonmetro.gov](mailto:sherrie.blackledge@oregonmetro.gov). Any questions, which in the opinion of Metro, warrant a written reply or RFP addendum will be furnished to all parties receiving this RFP. Metro may not respond to questions received after 3:00 p.m. on Friday, November 9, 2012.

### D. Information Release

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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. 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, Oregon 97232, 503-797-1648.

### VII. PROPOSAL CONTENTS

The proposal should contain no more than ten (10) pages of written material (excluding biographies, resumes 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.*

- 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. Approach/Project Work Plan: Describe how the work will be done within the given timeframe and budget. Include a proposed work plan and schedule.
- C. 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 resumes of individuals proposed for this contract.

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.

- 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. Cost/Budget: Present the proposed cost of the project and the proposed method of compensation. 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.
- F. Diversity in Employment and Contracting:
- 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,

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- 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 and whether or not your firm is certified by the State of Oregon as a DBE, MBE, WBE or ESB. Provide certification number, if applicable.

- G. Exceptions to Standard Agreement and RFP: Carefully review the Standard Agreement attached hereto as Exhibit A and incorporated herein. This is the standard agreement that successful respondents to this RFP will be required to execute. RFP respondents wishing to propose any exceptions or alternative clauses to the agreement or to any specified criteria within this RFP must propose those exceptions or alternative clauses in their Proposal; Metro shall not be required to consider contract revisions proposed during contract negotiation and award. Proposed exceptions or alternative clauses should be accompanied by explanatory comments that are succinct, thorough and clear.

### 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 the Metro contract number, an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Payment shall be made by Metro on a Net 30 day basis upon approval of Contractor 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](http://www.oregonmetro.gov).
- F. The Agreement resulting from this RFP shall be funded with federal funds. The proposal must be based on adherence to all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives including but not limited to the following: (1) all applicable terms and conditions set forth in the most recent Federal Transit Administration Master Agreement, (2) 48 CFR part 31, Contract Cost Principles and Procedures, (3) FTA Circular 5010.1D and (4) CFR 225 (OMB Circular A-87) Cost Principles for State, Local, and Indian Tribal Governments.

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## 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. Award shall be made to the highest ranked Proposer based on the stated evaluation criteria. In the event negotiations are unsuccessful, Metro reserves the right to negotiate with the next highest ranked firms.
- 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
Project Work Plan/Approach		
1.	Demonstration of understanding of the project objectives	25
2.	Performance methodology	10
Project Staffing Experience		
1.	Project consultant/staff experience	20
2.	Similar project experience	10
Budget/Cost Proposal		20
1.	Projected cost/benefit of proposed work plan/approach	
Diversity in Employment and Contracting		15
1.	Work Force Diversity, Diversity in Contracting, Diversity of Firm	
		100%

## X. NOTICE TO ALL PROPOSERS -- STANDARD AGREEMENT

The attached agreement included herein reflects preliminary, draft contract language and selected, proposed contract terms for this procurement. Proposers should be aware that such language terms and provisions are for illustrative purposes only and that Metro reserves the right, following submission and ranking of all proposals submitted in response to this procurement, to amend, modify or negotiate over any and all such contract language, terms and provisions regarding the agreement arising from this procurement. By submitting a proposal in response to this procurement, proposers acknowledge that they are aware of and do not object to any later, potential amendment and modification of such preliminary, draft language and terms. In addition, by responding to this procurement, proposers acknowledge that they are aware of their ability to offer alternatives to any of the preliminary, draft contract language and proposed contract terms set forth herein.

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## Personal Service Agreement over \$50,000

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 **Company Name**, referred to herein as "Contractor," located at **address, City, State Zip**.

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 **Month XX, 201X** and shall remain in effect until and including **Month XX, 201X**, unless terminated or extended as provided in this Agreement. **IF CONTRACT IS SUBJECT TO RENEWAL OR EXTENSION, INCLUDE SUCH LANGUAGE i.e. This agreement may be renewed or extended for XX additional one-year periods at Metro's sole discretion.**

2. **Scope of Work.** Contractor shall provide all services and materials specified in the attached "Attachment 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 **XXXXXXX** AND **XX/100THS DOLLARS (\$XXXXXX.XX)**. Payment shall be made by Metro on a Net 30 day basis upon approval of Contractor invoice.

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

(a) The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. Contractor's coverage will be primary as respects Metro;

(b) Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 per occurrence;

(c) Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000 per accident or disease; and

(d) Professional Liability Insurance, with limits of not less than \$1,000,000 per occurrence, covering personal injury and property damage arising from errors, omissions or malpractice. **PROFESSIONAL LIABILITY REQUIRED FOR ARCHITECTURAL & ENGINEERING SERVICES - DELETE PROFESSIONAL LIABILITY INSURANCE LANGUAGE IF NOT REQUIRED**

Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS on Commercial General Liability and Automobile policies.

Contractor shall provide to Metro 30 days notice of any material change or policy cancellation.

Contractor shall provide Metro with a Certificate of Insurance complying with this article upon return of the Contractor signed agreement to Metro. Certificate of Insurance shall identify the Metro contract number.

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 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.

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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.
- 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.

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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.

Metro considers Contractor to be a **Vendor** paid for with federal funds. Funding for this project is obtained from an Agreement between Metro and the *Federal Transit Administration (FTA)*, utilizing Alternative Analysis funds, CFDA No. 20.522.

As federal funds are involved in this Agreement, **Attachment B, Federal Clauses; and Exhibit 1 Debarment Certification** are attached and by this reference are hereby made part of this Agreement and incorporated herein as if set forth in full.

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 (without limitation) the following:

- all applicable terms and conditions set forth in the most recent FTA Master Agreement
- 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- OMB Circular 2 CFR 225 (formerly A-87), Cost Principles for State, Local and Indian Tribal Governments
- FTA Circular 5010.1D

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.



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

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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 without Metro's written consent.

13. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor seven (7) 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.

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. Metro may approve changes and modifications to the original contract, including deletions of work, order of additional materials, and additional services reasonably related to the original work scope. Contractor may propose changes in the work that Contractor believes are necessary, will result in higher quality work, improve safety, decrease the amount of the contract, or otherwise result in a better or more efficient work product. If such changes are approved by

Metro, they shall be executed by written contract amendment signed by both parties. Such changes shall not relieve Contractor of any obligation or warranty under the contract. No oral statements by either party shall modify or affect the terms of the contract.

16. Severability. The parties agree that any provision of this Contract that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Contract shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of them and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid and enforceable shall be automatically added to this Contract in lieu of the illegal, invalid, or unenforceable provision. Any failure by METRO to enforce a provision of the Contract is not to be construed as a waiver by METRO of this right to do so.

17. Counterparts. This Contract may be executed in counterparts or multiples, any one of which will have the full force of an original.

18. Delivery of Notices. Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail or fax as follows:

To Contractor: **Contractor Contact**  
**Firm Name**  
**Address**  
**City State Zip**  
**XXX-XXX-XXXX** fax

To Metro: Elissa Gertler  
 Metro  
 600 NE Grand Avenue  
 Portland, Oregon 97232  
 503-797-1752 fax 503-797-1930

19. Intergovernmental Cooperative Agreement: Pursuant to ORS 279A and the Metro 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 Contractor 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



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

# Request for Proposals - Informal (RFP 13-2267)

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Contractor specifically declines to participate in the program by marking the box below, the Contractor agrees to participate in the Intergovernmental Cooperative Purchasing program. **Contractor declines to participate in the Intergovernmental Cooperative Purchasing program as indicated by the following initials \_\_\_\_\_.** **REMOVE THIS SECTION IF IT DOES NOT APPLY TO THE CONTRACT**

CONTRACTOR

METRO

By \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

# Scope of Work – Attachment A

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Metro Contract No. XXXXXX

**1. Purpose and Goal of Work**

**2. Description of the Scope of Work**

**3. Deliverables/Outcomes**

**4. Payment and Billing**

Contractor shall perform the above work for a maximum price not to exceed XXXXXXXX AND XX/100<sup>TH</sup> DOLLARS (\$XXXXXX.XX).

**INCLUDE HOURLY RATES OR TASK BASED PAYMENTS IF APPLICABLE**

The maximum price includes all fees, costs and expenses of whatever nature. Each of Metro's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing invoices shall include the Metro contract number, Contractor name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of work performed and expenses incurred during the billing period, and will not be submitted more frequently than once a month. Contractor's billing invoices shall be sent to Metro Accounts Payable, 600 NE Grand Avenue, Portland, Oregon 97232-2736 or metroaccountspayable@oregonmetro.gov. The Metro contract number shall be referenced in the email subject line. Contractor's billing invoices for services through June 30 shall be submitted to Metro by July 15. Payment shall be made by Metro on a Net 30 day basis upon approval of Contractor invoice.

## Attachment B – Federal Clauses Contracts (25,000 up to 100,000)

The Contractor agrees to comply with all applicable Federal Clauses as outlined in the **October 1, 2011 FTA Master Agreement [FTA MA 18]** including, but not limited to, the following:

A. Federal Laws, Regulations, and Directives. The Recipient agrees that:

(a) Federal laws and regulations are Federal requirements that control Project award and implementation. The Recipient understands and agrees it might violate Federal laws or regulations, the underlying Agreement, or this Master Agreement if it adopts an alternative procedure or course of action without first securing FTA's approval in writing.

(b) Federal directives, as defined in this Master Agreement, provide Federal guidance. FTA strongly encourages the Recipient to follow Federal directives to ensure compliance with Federal requirements.

(c) New Federal laws, regulations, and directives may become effective after the Recipient executes the underlying Agreement, and might apply to that Agreement.

(d) New Federal laws, regulations, and directives may become effective after the Recipient executes the underlying Agreement, and might apply to that Agreement.

(e) The most recent of Federal laws, regulations, and directives will apply to its Project at any specific time, except as FTA determines otherwise in writing by:

1. Special Condition with the underlying Agreement,
2. Special Requirement with the underlying Agreement,
3. Special Provision within the underlying Agreement,
4. Condition of Award within the underlying Agreement,
5. Change to an FTA directive, or
6. Letter to the Recipient signed by an authorized FTA official.

(f) All standards or limits in the underlying Agreement and this Master Agreement are minimum requirements, except as FTA determines otherwise in writing.

(g) It will include in each third party agreement notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except as FTA determines in writing. *[FTA Master Agreement §2.c (1)]*

B. No Federal Government Obligations to Third Parties. Except as the Federal; Government expressly consents in writing, the Recipient agrees that:

(1) The Federal Government shall not be subject to any obligations or liabilities related to:

- (a) The Project,
- (b) Any third party participant at any tier, or
- (c) Any other person or entity that is not a party (Recipient or FTA) to the underlying Agreement.

(2) Notwithstanding that the Federal Government may have concurred in or approved any solicitation or third party agreement at any tier that has affected the Project, the Federal Government has no obligations or liabilities to any:

- (a) Third party participant, or
  - (b) Any other person or entity that is not a party (Recipient or FTA) to the underlying Agreement.
- [FTA Master Agreement §2.f]*

## Attachment B – Federal Clauses Contracts (25,000 up to 100,000)

C. Debarment and Suspension. The Recipient agrees that:

(1) It will not engage third party participants that are debarred or suspended except as authorized by:

(a) U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200, which adopt and supplement the following U.S. Office of Management and Budget (U.S. OMB) Guidelines and Executive Order,

(b) U.S. OMB, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180, and

(c) Executive Orders Nos. 12549 and 12689. “Debarment and Suspension,” 31 U.S.C. § 6101 *note*,

(2) It will review the “Excluded Parties Listing System” at <http://epls.gov/>, if required by U.S. DOT regulations, 2 C.F.R. Part 1200, and

(3) It will include, and require its third party participants to include a similar condition in each lower tier covered transaction, assuring that the lower tier third party participant will comply with:

(a) Federal debarment and suspension requirements, and

(b) Review the “Excluded Parties Listing System” at <http://epls.gov/>, if needed for compliance with U.S. DOT regulations 2 C.F.R. part 1200. [*FTA Master Agreement §3.b*]

D. Lobbying Restrictions. The Recipient agrees that:

(1) As provided by 31 U.S.C. §1352(a), it will not use Federal funds 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, to award or extend the underlying Agreement,

(2) It will comply with other Federal laws and regulations prohibiting the use of Federal funds for activities designed to influence Congress or a State legislature concerning legislation or appropriations, except through proper, official channels, and

(3) It will comply, and will assure the compliance of each third party participant with U.S.DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, as amended. [*FTA Master Agreement §3.d*]

E. False or Fraudulent Statements or Claims.

(1) Civil Fraud. The Recipient acknowledges and agrees:

(a) That the following Federal law and regulations apply to itself and its Project:

(1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and

(2) U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31.

(b) By executing the underlying Agreement:

(1) It certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it will make to the Federal Government in connection with the Project.

(2) It acknowledges that the Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, in addition to other penalties, if the Recipient makes, presents, or submits to the Federal Government, a false, fictitious, or fraudulent:

## Attachment B – Federal Clauses Contracts (25,000 up to 100,000)

- (a) Claim,
- (b) Statement,
- (c) Submission,
- (d) Certification,
- (e) Assurance, or
- (f) Representation.

(2) Criminal Fraud. The Recipient acknowledges and agrees:

(a) That the following Federal laws apply to itself and its Project:

- (1) Federal Transit law, specifically 49 U.S.C. § 5323(1), and
- (2) 18 U.S.C. § 1001,

(b) That Federal Government may impose the penalties of 18 U.S.C. § 1001, in addition to other penalties, if it makes a false, fictitious, or fraudulent:

- (1) Claim to the Federal Government
- (2) Statement to the Federal Government
- (3) Submission to the Federal Government
- (4) Certification to the Federal Government
- (5) Assurance to the Federal Government, or
- (6) Representation to the Federal Government. *[FTA Master Agreement §3.f]*

F. Access to Records of Recipients and Subrecipients. The Recipient agrees that:

(1) It will provide, and also require its third party participants at each tier to provide the following people sufficient access to inspect and audit the Project, as required by 49 U.S.C. § 5325(g):

- (a) The U.S. Secretary of Transportation and the Secretary's duly authorized representatives.
- (b) The Comptroller General of the United States, and his or her duly authorized representatives, and
- (c) State officials and their duly authorized representatives.

(2) The people listed in the preceding Section 8.e (1) of this Master Agreement will have access to:

(a) Inspect all of the following, whether owned or maintained by the Recipient, subrecipient, or other third party participant:

- 1 Project work,
- 2 Project materials,
- 3 Project payrolls, and
- 4 Other Project data, and

(b) Audit any information about the Project, whether owned or maintained by the Recipient, subrecipient, or other third party participant in their:

- 1 Books,
- 2 Records, or
- 3 Accounts. *[FTA Master Agreement §8.e]*

G. Right of the Federal Government to Terminate.

## Attachment B – Federal Clauses Contracts (25,000 up to 100,000)

a. Justification. After receiving notice, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the Federal funding to be provided for the Project for the following reasons:

- (1) The recipient has violated the underlying Agreement or this Master Agreement, especially if that violation would endanger substantial performance of the Project, or
- (2) Any failure to make reasonable progress on the Project, or
- (3) The Federal Government determines that the continuation of the Federal funding for the Project does not adequately serve the purposes of the law authorizing the Project.

b. Financial Implications. The Recipient agrees that:

- (1) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled.
- (2) The Federal Government may require the Recipient to refund the entire amount of the Federal funds provided for the Project or any lesser amount as the Federal Government may determine, if the Federal Government determines that the Recipient has willfully misused Federal funds by:

- (a) Failing to make adequate progress,
- (b) Failing to make appropriate use of Project property, or
- (c) Failing to comply with the underlying Agreement or this Master Agreement

c. Expiration of Project Time Period. Except in the case of Full Funding Grant Agreements, expiration of any Project time period established for the Project does not, by itself, constitute and expiration or termination of the underlying Agreement. *[FTA Master Agreement §11]*

### H. Civil Rights.

The Recipient understands and agrees that it must comply with all Federal civil rights laws and regulations, and follow Federal directives, except as 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, and assures that each third party participant will, comply with Federal transit law, specifically 49 U.S.C. § 5332, which prohibits the following:

- (1) Types of Discrimination.
  - (a) Exclusion from participation,
  - (b) Denial of program benefits, or
  - (c) Discrimination, including discrimination in employment or business opportunity,
- (2) Basis for Discrimination:
  - (a) Race,
  - (b) Color,
  - (c) Creed,

## Attachment B – Federal Clauses Contracts (25,000 up to 100,000)

- (d) National origin,
- (e) Sex, or
- (f) Age.

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each third party participant will, prohibit discrimination on the basis of race, color, or national origin and:

(1) Comply with:

- (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*,
- (b) 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 and
- (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and

(2) Follow FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” and any other applicable Federal directives that may be issued, except as FTA determines otherwise in writing.

c. Equal Employment Opportunity.

(1) Federal Requirements and Directives. The Recipient agrees to, and assures that each third party participant will prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:

- (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*
- (b) Follow and facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note,
- (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and,
- (d) Comply with other applicable EEO laws and regulations, as provided in directives, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.

(2) General. Recipient agrees to

(a) Ensure that applicants for employment and employees are treated during employment without discrimination on the basis of their:

- 1 Race,
- 2 Color,
- 3 Creed,
- 4 Sex,
- 5 Disability,
- 6 Age, or
- 7 National origin.

## Attachment B – Federal Clauses Contracts (25,000 up to 100,000)

(b) Take affirmative action that includes, but is not limited to:

- 1 Recruitment Advertising,
- 2 Recruitment,
- 3 Employment,
- 4 Rates of pay,
- 5 Other forms of compensation,
- 6 Selection for training, including apprenticeship,
- 7 Upgrading,
- 8 Transfers,
- 9 Demotions,
- 10 Layoffs, and
- 11 Terminations.

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the recipient agrees to comply, and assures the compliance of each third party participant, with:

(a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. parts 60 *et seq.*,

(b) 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

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate, and assures that each third party participant will facilitate, participation by Disadvantaged Business Enterprises (DBEs) in the Project as follows:

(1) Requirements. The Recipient agrees to comply with:

(a) Section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note,

(b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. Part 26 [*U.S. DOT published final rule, “Disadvantaged Business Enterprise: Program Improvements,” 49 C.F.R. Part 26, on January 28, 2011 (see Fed. Reg. 5083)*], and

(c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12a.

(2) Assurance. The Recipient assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any third party agreement supported with Federal funds 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 provided in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party agreements supported with Federal funds derived from U.S. DOT. If U.S. DOT has approved the Recipient’s DBE program, that DBE program is incorporated by reference and made part of the underlying Agreement. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out its DBE program shall be treated as a violation of the

## **Attachment B – Federal Clauses Contracts (25,000 up to 100,000)**

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underlying Agreement and this Master Agreement. If U.S. DOT finds and notifies the Recipient that it has not implemented its approved DBE program, U.S. DOT may impose sanctions provided by the underlying Agreement 49 C.F.R. Part 26, and in certain cases, seek 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 the following Federal prohibitions against discrimination on the basis of sex:

- (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*,
- (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25, and
- (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12a.

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with the following Federal prohibitions against discrimination on the basis of age:

- (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination against individuals on the basis of age,
- (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. Part 1625, which implements the ADEA,
- (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C.6101 *et seq.*, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds,
- (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. Part 90, which implements the Age Discrimination Act of 1975, and
- (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12a.

g. Accessibility. The Recipient agrees to comply with Federal prohibitions against discrimination against elderly individuals with disabilities of:

- (1) The following Federal laws:
  - (a) 49 U.S.C. § 5301(d), which acknowledges that elderly individuals and individuals with disabilities have the same right as others to use public transportation, and that special efforts must be made to plan and assure that they do have similar access to public transportation,
  - (b) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,
  - (c) 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;
  - (d) 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;

## Attachment B – Federal Clauses Contracts (25,000 up to 100,000)

- (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,
  - (2) The following Federal regulations:
    - (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37,
    - (b) 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,
    - (c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38,
    - (d) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35,
    - (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36,
    - (f) U.S. General Services Administration (U.S.GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19,
    - (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630,
    - (h) 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,
    - (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194,
    - (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and
  - (3) Other applicable Federal civil rights and nondiscrimination directives.
- h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of:
- (1) Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*,
  - (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. 4541 *et seq.*, and
  - (3) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd through 290dd-2.
- i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by:

## Attachment B – Federal Clauses Contracts (25,000 up to 100,000)

(1) Facilitating compliance with and following Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 42 U.S.C. § 2000d-1 note, and

(2) Following U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 *Fed. Reg.* 74087, December 14, 2005, except as the Federal Government determines otherwise in writing.

j. Environmental Justice. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by:

(1) Following and facilitating compliance with Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 42 U.S.C. § 4321 note, and

(2) Following DOT Order 5620.3, “Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 *Fed. Reg.* 18377, April 15, 1997.

k. Other Nondiscrimination Laws. The Recipient agrees to comply with other applicable Federal nondiscrimination laws and regulations, and follow Federal directives prohibiting discrimination, except as the Federal Government determines otherwise in writing. [*FTA Master Agreement §12*]

l. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with the following U.S. domestic preference requirements and follow applicable Federal directives regarding:

a. Fly America. Air transportation requirements of:

(1) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and

(2) U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 - 301-10.143. [*FTA Master Agreement §14(c)*]

J. Procurement.

The Recipient agrees not to use FTA funds for third party procurements unless they comply with Federal requirements. Therefore:

(a) Federal Laws, Regulations, and Guidance. The Recipient agrees

(1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affect its third party procurements,

(2) To comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 - 19.48 and other applicable Federal regulations that affect its third party procurements as may be later amended,

(3) To follow the most recent edition and revisions of FTA Circular 4220.1F, “Third Party Contracting Guidance,” except as FTA determines otherwise in writing, and

## Attachment B – Federal Clauses Contracts (25,000 up to 100,000)

(4) That although the FTA “Best Practices Procurement Manual” provides additional third party contracting guidance, the Manual may lack the necessary information for compliance with certain Federal requirements that apply to specific third party contracts at this time

(b) Access to Third Party Contract Records. The Recipient agrees to require, and assures that its subrecipients will require, their third party contractors and subcontractors at each tier to provide:

(1) The U.S. Secretary of Transportation and the Comptroller General of the United States, the State, or their duly authorized representatives, access to all third party contract records (at any tier) as required by 49 U.S.C. § 5325(g), and

(2) Sufficient access to all third party procurement records (at any tier) as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA. [FTA Master Agreement §15 (a), (t)]

### K. Patent Rights.

a. General. The Recipient agrees that:

(1) Depending on the nature of the Project, the Federal Government may acquire rights when the Recipient or third party participant produces a patented or patentable:

- (a) Invention,
- (b) Improvement, or
- (c) Discovery

(2) The Federal Government’s rights arise when the patent or patentable information is:

- (a) Conceived or
- (b) Reduced to practice under the Project,

(3) When a patent is issued or patented information becomes available as described in the preceding Section 17.a(1) of this Master Agreement, the Recipient agrees to:

- (a) Notify FTA immediately, and
- (b) Provide a detailed report satisfactory to FTA.

b. Federal Rights. The Recipient agrees that:

(1) Its rights and responsibilities, and those of each third party participant, in that invention, improvement, or discovery will be determined as provided by Federal laws, regulations, and directives, including any waiver thereof.

(2) Unless the Federal Government determines otherwise in writing, irrespective of its status or that of any third party participant as a large business, small business, State Government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Recipient agrees to transmit the Federal Government’s patent rights to FTA as specified in:

- (a) 35 U.S.C. 200 *et seq.*, and
- (b) 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.

## Attachment B – Federal Clauses Contracts (25,000 up to 100,000)

c. License Fees and Royalties. As permitted by 49 C.F.R. Parts 18 and 19:

- (1) License fees and royalties for patents, patent applications, and inventions derived from Project are program income.
- (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except:
  - (a) For compliance with 35 U.S.C. 200 *et. seq.*, which applies to patent rights developed under a federally funded research-type project, and
  - (b) As FTA determines otherwise in writing. [FTA Master Agreement §17]

L. Rights in Data and Copyrights.

a. Definition of “Subject Data”. As used in this Section 18 of this Master Agreement “subject data” means recorded information that:

- (1) Copyright. Are copyrighted or not copyrighted,
- (2) Delivery. Are delivered or specified to be delivered under the underlying Agreement, and
- (3) Examples. Include, but are not limited to:
  - (a) Computer software,
  - (b) Standards,
  - (c) Specifications,
  - (d) Engineering drawings and associated lists,
  - (e) Process sheets
  - (f) Manuals,
  - (g) Technical reports,
  - (h) Catalog item identifications, and
  - (i) Related information.
- (4) Exceptions. “Subject data” do not include:
  - (a) Financial reports,
  - (b) Cost analyses, or
  - (c) Other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the underlying Agreement:

- (1) Prohibitions. The Recipient may not:
  - (a) Publish or reproduce subject data in whole or in part, or in any manner or form, or
  - (b) Permit others to do so.
- (2) Exceptions. The prohibitions of the preceding Section 18.b (1) of this Master Agreement do not apply:
  - (a) to the public, or
  - (b) To publications or reproductions for the Recipient’s own internal use,
  - (c) To an institution of higher learning

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- (d) To the portion of data that the Federal Government has previously released or approved for release to the public, or
- (e) To the portion of data that has the Federal Government's prior written consent for release.

c. Federal Rights in Data Copyrights. The Recipient agrees as follows:

(1) License Rights. The Recipient must provide the Federal Government a license to "subject data" that is:

- (a) Royalty-free,
- (b) Non-exclusive, and
- (c) Irrevocable.

(2) Uses. The Federal Government's license must permit it to:

- (a) Reproduce the subject data,
- (b) Publish the subject data,
- (c) Otherwise use the subject data, and
- (d) Permit others to use the subject data for Federal Government purposes.

(3) Federal Government Purposes. As used in this Section 18 of the Master Agreement, "for Federal Government purposes," means that:

- (a) The Federal Government may use its license only for its own direct purposes, and
- (b) The Federal Government may not provide or otherwise extend to other parties, without the copyright owner's consent its license to:

(1) Any subject data developed and funded at any tier through the underlying Agreement, and

(2) Any rights of copyright to which the Recipient or third party participant purchases ownership using Federal funds.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its third party participants.

Therefore, the Recipient agrees that:

(1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet.

(2) Other Reports. It must provide other reports pertaining to the Project that FTA may request.

(3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its third party participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as FTA determines otherwise in writing.

(4) Identification of Information. It must identify clearly any specific confidential, privilege, or proprietary information submitted to FTA.

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- (5) Incomplete Project. If this Project is not completed for any reason whatsoever, all data developed under the Project becomes “subject data” and must be delivered as the Federal Government may direct.
- (6) Exception. This Section 18.d does not apply to any adaptation of automatic data processing equipment or program that is both:
- (a) For the Recipient’s use and,
  - (b) Acquired with FTA capital program funding.
- e. License Fees and Royalties. As permitted by 49 C.F.R. Parts 18 and 19:
- (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income.
  - (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except:
    - (a) For compliance with 35 U.S.C. 200 *et seq.*, which applies to patent rights developed under a federally funded research-type project, and
    - (b) As FTA determines otherwise in writing.
- f. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that:
- (1) Violation by Recipient. Except as prohibited or otherwise limited by State law, it will indemnify, save, and hold harmless the Federal Government’s officers, employees, and agents acting within the scope of their official duties, against any liability, including costs and expenses,
    - (a) If it willfully or intentionally violates:
      - 1. Any proprietary rights,
      - 2. Copyrights, or
      - 3. Right of privacy,
    - (b) Occurring from any of the following uses of Project data:
      - 1. Publication,
      - 2. Translation,
      - 3. Reproduction,
      - 4. Delivery,
      - 5. Use, or
      - 6. Disposition.
  - (2) Violation by Federal Officers, Employees or Agents. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding Section 18.f (1) caused by the wrongful acts of Federal; employees or agents.
- g. Restrictions on Access. To Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data either:
- (1) Implies a license to the Federal Government under any patent, or

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(2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that it may need to provide data developed without any Federal funding or support to FTA.

(1) Protections. Sections 18.a, 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project.

(2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding or support from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

i. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by:

- (1) The Freedom of Information Act, 5 U.S.C. § 552,
- (2) Another Federal law requiring access to Project records,
- (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or
- (4) Other Federal regulations requiring access to Project records. [FTA Master Agreement §18]

M. Environmental Protections.

a. Air Quality. The Recipient agrees to, and assures that its third party participants will, comply with the Clean Air Act, as amended, 42 U.S.C. §§ 7401 - 7671q, and implementing Federal regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

- (1) Public Transportation Operators. It will comply with:
  - (a) U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85;
  - (b) U.S. EPA regulations "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
  - (c) U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600 and any revisions to these regulations.
- (2) State Implementation Plans. It will support State Implementation Plans (SIP) by:
  - (a) Implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Project,
  - (b) Assuring that any Project identified as a Transportation Control Measure in its State's SIP will be wholly consistent with the design concept and scope of the Project described in the SIP,
  - (c) Complying with:

1. Subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c),

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2. U.S. EPA regulations, “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 C.F.R. Part 93, Subpart A, and

3. Other Federal conformity regulations that may be promulgated at a later date.

(3) Violating Facilities. It will:

(a) comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and

(b) 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.

b. Clean Water. The Recipient agrees to, and assures that its third party participants will, comply with the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377, and implementing Federal regulations, as provided in Federal directives, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

(1) Drinking Water. It will protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f - 300j-6.

(2) Violating Facilities. It will.

(a) Comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and

(b) 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),(c)]*

N. Energy Conservation.

The Recipient agrees to

a. State Energy Conservation Plans. Comply with the mandatory energy standards and policies of its State energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6321 *et seq.*, except as the Federal Government determines otherwise in writing.

b. Energy Assessment. Perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. Part 622, Subpart C. *[FTA Master Agreement §26]*

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

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

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

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

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

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Organization \_\_\_\_\_  
Date \_\_\_\_\_