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# Financial Advisor Services

## RFP 12-1945

### **Metro Finance and Regulatory Services**

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

### **Project Manager**

Margo Norton  
Margo.Norton@oregonmetro.gov  
503-797-1616

### **Procurement Analyst**

Sharon Stiffler  
Sharon.stiffler@oregonmetro.gov  
503-797-1613

Notice is hereby given that proposals for RFP 121945 for Financial Advisor Services shall be received by Metro, 600 NE Grand Avenue, Portland OR 97232 until close of business on August 25, 2011. It is the sole responsibility of the proposer to ensure that Metro receives the Proposal by the specified date and time. All late Proposals shall be rejected. Proposers shall review all instructions and contract terms and condition.

# Request for Proposals (RFP 12-1945)

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## I. INTRODUCTION

The Finance and Regulatory Services 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 from qualified firms to perform Financial Advisor Services for a period of three (3) years starting September 15, 2011, with an option for two annual extensions. 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

Metro, the nation's only elected regional government, was organized under the provisions of Oregon Revised Statutes (ORS) Chapter 268 to make available, in the Portland, Oregon metropolitan area, public services not adequately available through previously authorized governmental agencies. Under the 1992 Metro Charter, Metro's primary function is regional planning services. Metro is also authorized to exercise the following functions and is permitted by Charter to assume additional functions if approved by ordinance:

Acquisition, development, maintenance and operation of:

- A metropolitan zoo (The Oregon Zoo),
- Public cultural, trade, convention, exhibition, sports, entertainment, and spectator facilities (Oregon Convention Center and Portland Expo Center which are owned and operated by Metro, and the Portland Center for the Performing Arts whose facilities are owned by the City of Portland and managed by Metro),
- Facilities for disposal of solid and liquid wastes (Metro currently operates two public waste transfer stations and regulates management of solid waste for the region), and
- A system of parks, open spaces and recreational facilities of metropolitan concern.

In addition Metro is authorized for

- Metropolitan aspects of natural disaster planning and response coordination,
- Development and marketing of data, and
- Performance of any other function required by state law or assigned to Metro by voters.

The Metro Council is the governing body and consists of six part-time councilors; each elected on a nonpartisan basis from a single district within the Metro area. The Council President, who both administers the agency and presides over the policy-making of the Council, is elected from the Metro area at large. A Chief Operating Officer, appointed by the Council President and confirmed by the Council, is responsible for day-to-day administration of Metro, under the guidance of the Council President and the full Council. Metro is currently recruiting for a new Chief Operating Officer following the departure of Michael Jordan. The Council expects to appoint a new COO by Fall 2011

### Financial Structure

Metro's FY 2011-12 Adopted Budget is divided into thirteen distinct funds. The three largest funds include the General Fund at \$109.3 million, the Solid Waste Revenue Fund at \$95.4 million and the MERC Fund at \$68.3 million. Capital funds total \$47.8 million and debt funds total \$43.9 million. Five other miscellaneous funds

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including the agency's Risk Management Fund and the General Asset Management Fund provide the balance of approximately \$20 million. Metro's General Fund consists of the agency's general government and central service functions as well as those functions that are dependent on General Fund support for operations such as the Oregon Zoo, Regional Parks, Sustainability Center, Research Center and Planning and Development.

The FY 2011-12 adopted budget, projects \$197.6 million in operating resources (excluding beginning fund balances, bond proceeds, and interfund transfers). Of this amount, \$109.5 million, or 55 percent, comes from enterprise revenues. The balance of Metro's operating resources in FY 2011-12 will come from property taxes (20 percent), grants (6 percent), excise taxes (8 percent), intergovernmental transfers (6 percent), and all other sources (4 percent).

Metro's annual budgets and Comprehensive Annual Financial Reports are available on the Metro website at [www.oreogmetro.gov](http://www.oreogmetro.gov).

## Debt

Metro uses long and short-term debt to finance capital projects and some capital equipment. Metro has a relatively low level of outstanding debt. As of July 1, 2011, Metro has eight debt issues outstanding, totaling \$209,850,000. Periodically, Metro will refund bond issues to take advantage of lower interest rates. Metro currently has five refunding bond issues outstanding. Below is a summary of Metro's outstanding debt issues:

### **Metro Debt Summary Outstanding Debt Issues as of July 1, 2011**

	<b>Original Amount</b>	<b>Original Issue Date</b>	<b>Principal Outstanding</b>	<b>Final Maturity</b>
<b>GENERAL OBLIGATION BONDS</b>				
General Obligation Refunding Bonds				
Oregon Convention Center 2001 Series A	\$47,095,000	6/15/01	\$10,325,000	1/1/2013
Open Spaces, Parks, and Streams 2002 Series	92,045,000	10/30/02	45,880,000	9/1/2015
Metro Washington Park Zoo Oregon Project 2005 Series	18,085,000	5/12/05	11,695,000	1/15/2017
General Obligation Bonds				
Natural Areas 2007 Series	124,295,000	4/3/07	86,015,000	6/1/2026
Oregon Zoo Infrastructure & Animal Welfare 2010 Series	15,000,000	8/5/10	4,165,000	6/1/2012
<b>TOTAL GENERAL OBLIGATION BONDS OUTSTANDING</b>			<b>\$158,080,000</b>	
<b>FULL FAITH AND CREDIT BONDS</b>				
Full Faith and Credit Refunding Bonds				
2003 Series	\$24,435,000	10/16/03	\$16,300,000	8/1/2022
2006 Series	14,700,000	4/20/06	12,210,000	12/1/2024
<b>TOTAL FULL FAITH &amp; CREDIT BONDS OUTSTANDING</b>			<b>\$28,510,000</b>	
<b>PENSION OBLIGATION BONDS</b>				
Limited Tax Pension Obligation Bonds				
Series 2005	\$24,290,000	9/13/05	\$23,260,000	6/1/2028
<b>TOTAL PENSION OBLIGATION BONDS OUTSTANDING</b>			<b>\$23,260,000</b>	
<b>GRAND TOTAL – METRO DEBT OUTSTANDING</b>			<b>\$209,850,000</b>	

In November 2006 Metro received authorization from the voters to issue \$227.4 million in general obligation bonds for the acquisition of natural areas. The first series of bonds under this authorization was issued in April 2007. A balance of \$103,105,000 remains to be issued in one or more series under this authorization.

In addition, in November 2008 Metro received authorization from the voters to issue \$125.0 million in general obligation bonds for Oregon Zoo infrastructure and projects related to animal welfare. A small \$5 million bond was

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issued under this authorization in December 2008. An additional \$15 million bond was issued in August 2010. A balance of \$105,000,000 remains to be issued in one or more series under this authorization.

Metro is currently evaluating short- and long- term needs under these bond authorizations. Current forecasts estimate half of the remaining authorization on the Oregon Zoo Infrastructure bonds, approximately \$50 million, will be issued in Spring 2012. An additional series under the 2006 natural areas authorization is estimated to be issued in 2013 at the earliest.

In March 2007 Metro was awarded underlying Aaa/AAA (“double triple”) ratings for its general obligation debt issues by Moody’s Investors Services and Standard & Poor’s Ratings Services, the highest ratings available. Standard & Poor’s reaffirmed its rating in March 2011.

### III. PROPOSED SCOPE OF WORK/SCHEDULE

- A. The selected financial advisor must be able and available to perform the following: *(please note: Metro does not guarantee an exclusive contract in these matters and reserves the right to contract with other vendors as needed.)*
- B. Bond Transactions:
  1. Provide services related to bond sales, such as assistance in preparation of preliminary and final official statements, scheduling and structuring sales instruments, helping to negotiate bond sale terms and conditions, and contact with rating agencies.
  2. Identify options for debt issuance, refunding and alternative financing strategies, both taxable and tax exempt.
- C. Advise Metro on matters related to its various operations examples of which may include but not be limited to
  1. Reassessment of an Oregon Convention Center Headquarters Hotel project including such topics as market perception of different bond structures and level of coverage; appropriate necessary reserve levels; and review, analysis and advice regarding the proforma and financial structuring of a proposed Convention Center Headquarters Hotel.
  2. Participation in efforts to encourage development in corridors and centers including affordable housing.
  3. Analysis and advice on future issues such as financing plans for the Expo Center, Glendoveer Golf course and development of Blue Lake Park.
  4. Review and advice related to long-term Waste Disposal System planning and financing.
- D. Advise Metro as needed on matters related to financial planning, debt management and policy, examples of which may include but not be limited to:
  1. Compliance, required disclosures, market conditions and regional economic trends.
  2. Investment strategies including such items as Swaps and securities lending.
  3. Post-sale administration of debt proceeds.
  4. Monitoring outstanding debt for refunding and restructuring opportunities to reduce debt service and improve project management.

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5. Debt management and financial policies.
  6. Appropriate reserve policies and funding levels
  7. Updating of long-range financial and capital improvement plans.
  8. Establishing and monitoring financial indicators and in reviewing and updating agency financial policies.
  9. Researching and analyzing various ongoing funding and financing alternatives.
  10. Identifying, researching, and implementing new funding sources under Metro's home rule charter
  11. Financing of capital needs.
- E. In addition, the selected financial advisor may be called upon to make occasional presentations to the Metro Council, Council committees, bond counsel, and/or staff as needed.

#### IV. SPECIAL CONSIDERATIONS

##### A. Conflicts of Interest

1. Proposers must either certify that no actual or potential conflicts of interest exist at the time of submittal of their proposal, or if such conflicts do exist, they must be disclosed.
2. Metro will require its financial advisor to disclose any actual or potential conflict of interest that may arise at any time during this engagement.
3. The successful proposer will be required to agree to refrain from any underwriting or trading of Metro debt, or debt secured in whole or part by Metro, or debt issued to finance (in whole or part) loan agreements or other financial arrangements with Metro.

##### B. Arbitrage/Rebate Management Services

Metro currently has a contract with Arbitrage Compliance Services for arbitrage/rebate management services. Both the provider of financial advisory services and arbitrage/rebate management services will be required to coordinate their advice and services to the extent practical.

##### C. Bond Counsel

Metro currently has a contract with K & L Gates for bond counsel services. Both the provider of financial advisory services and bond counsel services will be required to coordinate their advice and services to the extent practical.

#### V. PROJECT ADMINISTRATION

All work of the financial advisor will be coordinated through the Director of Finance and Regulatory Services or his/her designee. Principal contacts will include the Director of Finance and Regulatory Services, the Deputy Director of Finance and Regulatory Services, the Budget Coordinator, and key staff personnel of the operating department for which a project is undertaken.

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### VI. PROPOSAL INSTRUCTIONS

A. Submission of Sealed Proposals

5 copies of the proposal shall be furnished to Metro in a sealed envelope, addressed to:

Metro Procurement Services  
Attn: Sharon Stiffler RFP 12-1945  
600 NE 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 Sharon Stiffler, [sharon.stiffler@oregonmetro.gov](mailto:sharon.stiffler@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 will not respond to questions received after 3:00 pm on August 18, 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. 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, 503-797-1648.

### VII. PROPOSAL CONTENTS

The proposal should contain no more than 10 pages of written material (excluding resumes, official statement 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, folders, binders or non-recyclable materials should be included in the proposal.

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### A. Transmittal Letter

Please provide the following information as a transmittal letter to your proposal, in the following order:

1. Firm Name
2. Mailing Address
3. Web site address
4. Business Account representative (name, phone and email address)
5. Project manager assigned ,if applicable (name, phone and email address)
6. State certification, if any, as a minority-owned, women-owned or emerging small business
7. Registration as required under Section 15B(a)(1) of the Securities Exchange Act, as amended by Section 975(a)(1)(B) of the Dodd-Frank Act

### B. Qualifications of the firm

1. Organization.
2. Staff assigned (include resumes).
3. Other professional resources.
4. Technical support resources and services.

### C. Experience of the firm

1. List your most recent financial advisory relationships in the last three to five years. Please include the names, addresses, and phone numbers of contact persons. Briefly describe the work performed, including the dollar amount of the issues or other financings.
2. Briefly describe your firm's experience in the last three to five years providing general advice or assistance on work similar to that described in the Scope of Work Sections B and C, for government agencies.
3. Please attach a recent representative example of a municipality's official statement for which you acted as financial advisor within the last three years

### D. Compensation

1. For bond transactions please indicate the compensation structure to be utilized for
  - i. Bond issues greater than \$30 million,
  - ii. Bond issues less than \$30 million, if different, and
  - iii. Bank qualified or private placement issues.
2. For all other proposed work, indicate the proposed fee schedule including hourly rates of personnel assigned to Metro.
3. If the firm proposes that Metro bear the costs of incidental expenses (including travel expenses), clearly state what type of incidental expenses Metro will be expected to bear.

### 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 an MBE, WBE or ESB. Provide certification number, if applicable.
- G. Sustainable Business Practices
- Economy: Describe your business practices to reduce environmental impacts of your operations. This may include energy efficiency, use of non-toxic products, alternative fuel vehicles, waste prevention and recycling, water conservation, green building practices, etc.
  - Environment: Describe your support of local businesses and markets within the Portland Metro region. Include what steps your company has taken in the past to support local businesses, and what steps would be taken if selected for this project.
  - Community: Describe the employee compensation structure of your organization. Include wage scales for employees, including trainee, probationary, entry level, journey level, and supervisory. Also include policies regarding annual cost of living adjustments (COLA) to employee wages. Details of the healthcare program (including, medical, dental, prescriptions, preventive care, etc.) as well as out of pocket and deductibles, and employee contributions for themselves and family members. All other employee benefits are to be including, such as vacation, sick leave, pension, disability insurance, profit sharing, childcare, health memberships, company vehicle, public transportation, etc.
- H. 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 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.

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- 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 firm(s). Award will be made to the highest ranked Proposer according to the evaluation criteria. If contract negotiations are unsuccessful with the highest ranked firm, Metro reserves the right to enter into negotiations with the next highest ranked Proposer.

All firms submitting proposals will be notified when a consultant has been selected. Metro reserves the right to reject any or all proposals, to waive irregularities and technicalities and to accept the proposal deemed most advantageous to Metro.

- B. Evaluation Criteria: Firms responding to the Request for Proposals will be evaluated on the basis of the following
1. General (10 points)
    - a. Organization of proposal.
    - b. Responsiveness to the purpose and scope of services
  2. Personnel (25 points)
    - a. Experience and qualifications of personnel assigned to this project.
    - b. Ease of access to assigned personnel and their availability for consultation and meetings on short notice.
    - c. Additional professional and technical resources available.
  3. Organization and Experience of Firm (25 points)
    - a. Qualifications of the firm to address Metro's potential projects and issues of concern to Metro.
    - b. Past experience with similar type of work for government agencies and/or special districts.
    - c. References from previous financial advisory relationships.
  4. Cost of services (20 points)

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5. Diversity (10 points)
  - a. Work Force Diversity
  - b. Diversity in Contracting
  - c. Diversity of Firm
  
6. Sustainable Business Practices (10 points)
  - a. Environmental Impact
  - b. Support of local business and markets
  - c. Employee compensation structure

### **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 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 before making a final determination regarding the issuance of the Notice of Intent to Award the agreement rising 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.



# Personal Services Agreement

For Personal Service Agreements \$50,000 & Up

Metro Contract No. XXXXXX

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 the non-exclusive 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 **XXXXXXXX** 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) If required by the Scope of Work, 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.

Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED 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.

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,



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# Personal Services Agreement

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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.
- 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.



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503-797-1700

# Personal Services Agreement

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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 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.

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 will include an itemized statement of work done and expenses incurred during the billing period, will not be submitted more frequently than once a month, and will be sent to Metro, Attention: Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736. Payment shall be made by Metro on a Net 30 day basis upon approval of Contractor invoice.