



M. James Gleason Boat Ramp Parking Lot/ Restroom Project - Design & Engineering

RFP 12-2006

Metro Parks and Environmental Services

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

Project Manager

Lydia Neill
lydia.neill@oregonmetro.gov
503-797-1830

Procurement Analyst

Karen Slusarenko, CPPB
karen.slusarenko@oregonmetro.gov
503-797-1809

Notice is hereby given that proposals for RFP 12-2006 for M. James Gleason Boat Ramp Parking Lot/ Restroom Project - Design & Engineering shall be received by Metro, 600 NE Grand Avenue, Portland OR 97232 until close of business on February 29, 2012. It is the sole responsibility of the proposer to ensure that Metro receives the Proposal by the specified date and time. All late Proposals shall be rejected. Proposers shall review all instructions and contract terms and conditions.



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

Request for Proposals (RFP 12-2006)

I. INTRODUCTION

The Parks and Environmental Services of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals for the M. James Gleason Boat Ramp Parking Lot / Restroom Project - Design & Engineering. Proposals will be due as indicated on the RFP cover page.

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

II. BACKGROUND/HISTORY OF PROJECT

The M. James Gleason boat ramp facility was acquired by Metro from Multnomah County in 1996 in an exchange of assets. The site is located along mile 109.4 on the Columbia River and at 4325 Marine Drive. The 18 acre site includes a degraded 5 acre parking lot, two buildings currently being used by Marine Patrol for operations and a ramp for launching boats and a floating dock for transient boat moorage and for anchoring boat houses used by Marine Patrol and the Port of Portland. The City of Portland approved a conditional use master plan for the site to improve the boat ramp, parking areas, construct a new Multnomah County Marine Patrol building and dock facilities. This master plan conditional use permit expires in 2012. This project encompasses the last phase of the improvements and will modernize the parking lot, include storm water treatment, provide landscaping, create better circulation and add a small parking area to the east of the existing lot for additional car parking for beach use. The site does not contain any permanent restrooms. The site is heavily used by the boating and fishing community and for access to Broughton Beach.

III. PROPOSED SCOPE OF WORK/SCHEDULE

Metro is seeking proposals from qualified firms to complete design and engineering of the parking lots, landscaping and restroom facilities. Metro will purchase a pre-fabricated four stall restroom facility through the State of Oregon contract which will be included within the project scope to located the building and provide services. A preliminary design has been prepared by the Oregon State Marine Board (OSMB) that shows circulation, restroom locations and extent of the work area intended for the project. Because of previous work that has been completed on the site, extensive survey and CAD information is available and the site layout and circulation is complete. Very limited changes to the layout and design are anticipated. The grading plan will also be provided by the OSMB. It is desirable to have design documents at 100% completion and permits obtained before the Request for Bid for the construction phase of the project is released. All available information on the project is being made available through Metro's FTP site at:<ftp://ftp.oregonmetro.gov/pub/parks/MJGleasonBoatRamp>.

Design and Engineering will include:

- Main boat parking lot, revised entrance drive off of Marine Drive and entry into the adjacent parking lot that serves the portage building with a boat wash down area.
- Car parking lot east of the main boat parking lot and an ADA accessible path to the beach.
- Incorporate the pre-engineered 4 stall restroom facility with appropriate utility connections to this owner provided building.
- Provide storm water treatment for both parking lots and meet the City of Portland's landscape requirements
- Landscaping within the parking lots and the north slope of the dike on Marine Drive fronting the main parking lot and along the frontage of the lots along Marine Drive.
- Construction plans and specifications for bidding and permit submittal.
- Provide permitting assistance as required by Metro's construction manager.
- Limited construction administrative services; Metro will act as the construction manager.



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

Request for Proposals (RFP 12-2006)

A more detailed Scope of Work is included as Attachment A to the Personal Services Agreement within this RFP document. In addition, certain federal contracting requirements exist as indicated in Section 10 of the attached Personal Services Agreement.

Tentative Project Timeline

Initial Project Kick-off Meeting	March 2012
Design Development	March 2012
Design at 50%	April 2012
Design at 90%	May 2012
Construction Documents complete	July 2012
Building permits submitted/approved	July-August 2012
Advertise for Request for Bids – Construction Phase	August 2012
Bid Opening	late August 2012
Notice to Proceed	early September 2012
Construction complete	April 2013

IV. QUALIFICATIONS/EXPERIENCE

Proposers shall have the following experience:

- (1) Engineering: minimum of three (3) years experience with similar size and complexity of project performed within the City of Portland
- (2) Landscape Architecture: minimum of three (3) years experience with similar size and complexity of project performed within the City of Portland

V. PROJECT ADMINISTRATION

Metro’s project manager, Lydia Neill, will administer this project. Proposer shall indicate one point of contact for the resulting contract.

VI. PROPOSAL INSTRUCTIONS

A. Submission of Sealed Proposals

Seven (7) written copies and one (1) electronic version of the proposal shall be furnished to Metro in a sealed envelope, addressed to:

Metro Procurement Services
 Attn: Karen Slusarenko, RFP 12-2006
 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 Karen Slusarenko, Karen.Slusarenko@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 February 20, 2012.

Request for Proposals (RFP 12-2006)

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.

F. MANDATORY Pre-Proposal Conference

A mandatory pre-proposal conference will be held at 600 NE Grand Avenue, Portland, OR 97232 in Room 270 on February 13, 2012 from 1:00 p.m. to 2:30 p.m. Interested proposers and subconsultants are required to attend the conference in order to gain information about the RFP requirements.

VII. PROPOSAL CONTENTS

The proposal should contain no more than twenty (20) 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, folders, binders 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.

Request for Proposals (RFP 12-2006)

- 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 all subconsultant fees by work task as identified in the attached work scope. 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, 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. Provide a list of proposed subcontractors for this project including MWESB certification number, if applicable.
 - Diversity of Firm – Describe the ownership of your firm and whether or not your firm or any subcontractors are certified by the State of Oregon as an MBE, WBE or ESB. Provide certification number, if applicable.
- G. Sustainable Business Practices
- Environment: 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.
 - Economy: 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

Request for Proposals (RFP 12-2006)

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.
- D. Conflict of Interest. A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.
- E. Equal Employment and Nondiscrimination Clause Metro and its contractors will not discriminate against any person(s), employee or applicant for employment based on race, color, religion, sex, national origin, age, marital status, familial status, gender identity, sexual orientation, disability for which a reasonable accommodation can be made, or any other status protected by law. Metro fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. For more information, or to obtain a Title VI Complaint Form, see www.oregonmetro.gov.
- F. Intergovernmental Cooperative Agreement Pursuant to ORS 279A and the Metro public contract code, Metro participates in an Intergovernmental Cooperative Purchasing program by which other public agencies shall have the ability to purchase the goods and services under the terms and conditions of this awarded contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to Metro under this agreement. Any estimated purchase volumes listed herein do not include volumes for other public agencies, and Metro makes no guarantee as to their participation in any purchase. Any proposer 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 proposer specifically declines to participate in the program by indicating this in their transmittal letter, the proposer agrees to participate in the Intergovernmental Cooperative Purchasing program.

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.



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

Request for Proposals (RFP 12-2006)

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	15
2. Ability to meet defined schedule	20
Project Staffing Experience	
1. Project consultant	5
2. Commitment to project	5
Budget/Cost Proposal	
1. Projected cost; commitment to budget parameters	15
2. Hourly rates, total personnel expenditure, fees and expenses	15
Diversity	10
1. Work Force Diversity, Diversity in Contracting, Diversity of Firm	
Sustainable Business Practices	10
1. Environmental, Economy, Community	
	100%

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 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.

Request for Proposals (RFP 12-2006)

For Personal Service Agreements \$50,000 & Up

Metro Contract No. _____

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 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.

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.

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

Request for Proposals (RFP 12-2006)

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.
- 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.

Request for Proposals (RFP 12-2006)

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.

As federal funds are involved in this Agreement, Exhibit 1, and its Attachments A and B 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: (1) the terms and conditions applicable to a "recipient" set forth in the October 1, 2010 FTA Master Agreement (2); 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; (3) OMB Circular 2 CFR 225 (formerly A-87), Cost Principles for State, Local and Indian Tribal Governments; and (4) 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.

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



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

Request for Proposals (RFP 12-2006)

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.

CONTRACTOR

By _____

Print Name _____

Date _____

METRO

By _____

Print Name _____

Date _____

Request for Proposals (RFP 12-2006)

Attachment A to Personal Services Agreement - Scope of Work

1. Purpose and Goal of Work:

Design and engineering for a new main parking lot for boaters and restroom facilities and car parking lot for beach users including landscaping, utilities, storm water facilities and other site amenities. The project is expected to include the use of materials to allow treatment and infiltration of storm water, high recycled content site amenities/ materials and local sourcing of materials to be used in construction. The landscape design must include native plant materials, a temporary irrigation system that limits the use of potable water and selection of appropriate species for shading both parking lots, allowing clear lines of sight for vehicles and to reduce heat island effects. This project will be publically bid in early summer in order to begin construction of this project in fall of 2012. This schedule is extremely important because the boat ramp is heavily used in the summer months and during periods in early spring as fishing on the Columbia opens.

- Complete design and engineering for two parking lots (boats and cars) at M. J. Gleason Boat ramp that incorporate sustainable elements into the design
- Produce biddable and permit quality plans and specifications
- Provide assistance to Metro's project manager as needed during permit review in the form of revisions required by the City, Metro will submit permit documents and coordinate this process with the City
- Provided limited construction administrative services throughout the construction of the project which may include review and approval of submittals, value engineering proposals made by the contractor, change order estimates and a limited number of site visits

2. Description of the Scope of Work

Complete schematic design based on preliminary design and grading plan provided by OSMB. Prepare construction documents and information needed for permit submittal to the City of Portland. Although Metro will submit for permits (except trade permits) consultant will be required to prepare revisions as required by the City of Portland or other agencies. Provide construction administration services needed to review submittals, provide final walk through of site and review change orders as required by Metro's construction manager. Metro will act as the on-site construction manager and conduct weekly meetings, prepare project notes, route submittals and track change orders and provide general project management and coordination.

Detailed Scope of Work

Task I – Review Existing Information and Finalize Work Scope

- a. Review existing information relating to the M.J. Gleason Master Plan and documents and conditions.
- b. Attend project kick-off meeting to clarify and/or revise work scope plan and schedule as needed.

Product: Revised final work plan and schedule if needed.

Task II – Site Analysis, and Schematic Design

- a. OSMBhas prepared an existing site plan and grading plan. Survey data is available for the project and will be provided to the consultant team. Project information is expected to be generated from existing plans, maps and electronic files provided by Metro.
- b. Identify environmental constraints and opportunities.
- c. Identify opportunities for sustainable design options to be incorporated into proposed parking lots. This may include material choices, construction methods and design standards.
- d. Identify potential permitting obstacles to site design and construction.
- e. Develop schematic design for boat parking lot, siting of restrooms, site amenities, signage, natural features, and car parking lot based on preliminary work prepared by OSMB.
- f. Conduct cost feasibility analysis. Feasibility analysis shall consider initial design, construction and inspection costs, permit issues and requirements, and long-term maintenance costs.



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

Request for Proposals (RFP 12-2006)

Products:

1. Provide drawings (full size- ANSI D) of existing conditions and site analysis for project area from CAD files provided by Metro, showing, but not be limited to topography, property boundaries, site circulation, storm water features, other natural features, existing structures and utilities.
2. Present findings to design team for selection of a most feasible option(s).
3. Refine preliminary design as needed along with cost estimates.

Task III – Design Development and Construction Document Preparation

Contractor will refine schematic design elements approved by the project team and prepare designs and construction documents (AutoCAD plans and technical specifications) from the final concept for submittal for building permit review. Provide in a current version of AutoCAD and in PDF format.

Design services include:

- a. Attend initial design meeting with the project advisory team to establish project scope and design parameters. Attend design progress meetings with design team as necessary but no less than monthly.
- b. Develop construction documents based on on-site supplemental surveying provided by Metro.
- c. Develop design and engineering construction documents for facility improvements (in AutoCAD or compatible format); Design Development 50%, 90% and final documents. Each stage of the design process is predicated on Metro approval of the current stage submittal. The following design parameters must be incorporated in the design:
 - Final construction documents must meet all applicable current Metro, City of Portland, State and Federal development codes. Design must be in compliance with the OSMB Design Guidelines for Recreational Boating Facilities- Third Edition.
 - Materials specified will be new and installed in accordance with the appropriate codes, regulations and industry standards, including materials utilizing recycled content per Metro Executive Order 47.
 - Design specifications will require the construction contractor to make submittals for all materials to be used in the construction of the parking lots and the site improvements.
 - Design will include guidance for the construction contractor to minimize disruption to the sheriff and Portland of Portland during construction.
 - Design will take into consideration long-term operation and maintenance efficiencies.
 - Design to take advantage of any reuse and salvage materials during construction.
 - Design will incorporate sustainable design elements to treat storm water, reduce or generate electricity, low impact development and use sustainable materials where possible.
 - Erosion Control/Resource Protection Plan shall be included in construction documents that meet State, Federal and County requirements.
- d. Attend pre-application conference with the City of Portland. Be prepared to allot a minimum of 4 hours to address technical questions, if required.
- e. Prepare construction cost estimates at design development, 50%, 90% and final (100%) submittal phases.

Products:

1. Provide two hard copies (one full size and one 11x17 reduced set) of construction document plan sets for facilities at 50% and 90% completion and of final documents as well as electronic versions (PDF's).
2. Provide specifications at 90% and 100% for bid purposes.
3. Provide drawing sizes necessary for submittal of all required permits.
4. Provide construction cost estimates at design development, 50%, 90% and final document submittal.
5. Provide one complete final set on a CD in AutoCAD and in PDF format.
6. Provide review and consultation with owner for purchase of pre-engineered structures.
7. All final (100%) plans, specifications and estimate shall be stamped and signed by a registered engineer.

Request for Proposals (RFP 12-2006)

Task IV – Permitting Support – are there products for this task?

- a. Attend coordination meetings as needed with Metro staff and/or permitting agencies.
- b. Provide required narratives and design documents for Environmental Review permit and Removal/Fill permit including mitigation plans/designs if required.
- c. Prepare construction documents at the earliest possible time in the design process to permitting agencies for building and development review. Revise documents as required so that Metro can obtain construction permits as close to bid opening as possible.
- d. Review and provide comments on plans and specifications provided by manufacturers of pre-engineered restroom.

Task V – Bid and Construction Phase Assistance

- a. Attend the pre-bid conference and be prepared to spend up to four hours (includes travel) addressing technical questions related to bidding to be held at Metro.
- b. Prepare construction documents and specifications for bid.
- c. Attend pre-construction conference to address technical details (1 hour typical).
- d. Provide assistance during construction including review of submittals and change order requests, periodic site visits. Attendance at all weekly construction meetings is not required.
- e. Compile record drawing information from field notes, ASI's and responses to RFI's and revise construction plans accordingly.

Products:

1. Review of contractor submittals; field reports during construction.
2. Provide to Metro two hard copies and one electronic copy of record drawings in AutoCAD and PDF format.

3. Payment and Billing

Contractor shall perform the above work for a maximum price not to exceed **XXXXXXX** AND **XX/100TH** DOLLARS (**\$XXXXXX.XX**). A break out shall be provided by work task as identified in the work scope attachment.

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 the Metro contract number, 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 or metroaccountspayable@oregonmetro.gov. Payment shall be made by Metro on a Net 30 day basis upon approval of Contractor invoice.

Request for Proposals (RFP 12-2006)

Exhibit 1 FTA Master Agreement to Personal Services Agreement

The Contractor agrees to comply with all applicable Federal Clauses as outlined in the **October 1, 2009 FTA Master Agreement [FTA MA 16]** including, but not limited to, the following:

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

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

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

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

Request for Proposals (RFP 12-2006)

“Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180. The Recipient agrees to, and assures that its subrecipients, lessees, third party contractors, and other participant at any tier of the Project will, review the “Excluded Parties Listing System” at <http://epls.gov/> before entering into any third subagreement, lease, third party contract, or other arrangement in connection with the Project.

D. Lobbying Restrictions. The Recipient agrees that:

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

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

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

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

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to the Recipient’s activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

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

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

G. Right of the Federal Government to Terminate. Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be

Request for Proposals (RFP 12-2006)

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

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

Request for Proposals (RFP 12-2006)

upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each subrecipient, lessee, third party contractor, or other participant, at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and also with any Federal laws and regulations in accordance with applicable Federal directives affecting construction undertaken as part of the Project.

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

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

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

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

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

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of

Request for Proposals (RFP 12-2006)

Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

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

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

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

Request for Proposals (RFP 12-2006)

- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.
- h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 et seq., and any amendments thereto.
- i. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005.
- j. Environmental Justice. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.
- k. Other Nondiscrimination Laws. The Recipient agrees to comply with all applicable provisions of other Federal laws and regulations, and follow applicable Federal directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing. *[FTA Master Agreement §12]*
- l. Fly America. The Recipient understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143. *[FTA Master Agreement §14(c)]*
- J. Federal Standards. The Recipient agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and other procurement requirements of Federal laws in effect now or as amended to the extent applicable; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Recipient also agrees to follow the provisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," November 1, 2008, and any later revision thereto, except to the extent FTA determines otherwise in writing. The Recipient agrees that it may not use FTA assistance to support its third party procurements unless there is satisfactory compliance with Federal laws and regulations. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Recipient understands and agrees that the FTA "Best Practices Procurement Manual" is focused on third party procurement processes and examples and may omit certain Federal requirements applicable to specific third party contracts. *[FTA Master Agreement §15(a)]*

Request for Proposals (RFP 12-2006)

- K. Access to Third Party Contract Records. The Recipient agrees to require its third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require its third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA. [FTA Master Agreement §15(t)]
- L. Patent Rights.
- a. General. If any invention, improvement, or discovery of the Recipient or of any subrecipient, lessee, any third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.
- b. Federal Rights. The Recipient agrees that its rights and responsibilities, and those of each subrecipient, each lessee, each third party contractor, or any other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, third party subcontract, or arrangement, as specified in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401 (implementing 35 U.S.C. §§ 200 et seq.), irrespective of the status of the Recipient, subrecipient, lessee, third party contractor or other participant in the Project (i.e., a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, individual, etc.). [FTA Master Agreement §17]
- M. Rights in Data and Copyrights.
- a. Definition. The term "subject data," as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data," as used in this Section 18, does not include financial reports, cost analyses, or other similar information used for Project administration.
- b. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:
- (1) Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

Request for Proposals (RFP 12-2006)

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

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

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

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

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

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

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

Request for Proposals (RFP 12-2006)

- g. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."
- h. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other Federal laws or regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or regulation providing access to such records). [*FTA Master Agreement §18*]
- N. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws and regulations in accordance with applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:
- (1) The Recipient agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and in accordance with any applicable Federal directives that may be issued at a later date; to comply with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and to comply with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.
 - (2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the Recipient agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project: "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.
 - (3) The Recipient agrees to comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note. [*FTA Master Agreement §25(b)*]
- O. Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws and regulations in accordance with

Request for Proposals (RFP 12-2006)

applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

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

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

P. Energy Conservation.

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

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

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

a. Notification to FTA. The Recipient agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform FTA in writing before doing so. Each notice to FTA under this Section 53 of this Master Agreement shall be provided, at a minimum, to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.

b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery, except that the Recipient may return any liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

c. Enforcement. The Recipient agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.

d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.

e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate. *[FTA Master Agreement §53]*

Request for Proposals (RFP 12-2006)

Exhibit 1 Attachment A CERTIFICATION REGARDING LOBBYING

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

Signature of Contractor's Authorized Official

Name (Printed)

Title

Date



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

Request for Proposals (RFP 12-2006)

Exhibit 1 Attachment B CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION

- (1) The prospective participant certifies that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) When the prospective participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Company Name _____

Signature _____

Title _____

Date _____