

Branded Promotional Items

RFP 13-2275

Metro Procurement Department
600 NE Grand Avenue
Portland, OR 97232-2736
503-797-1700

Procurement Analyst

Julie Hoffman
Julie.hoffman@oregonmetro.gov
503-797-1648

Notice is hereby given that proposals for RFP 13-2275 to establish a Qualified Vendor List for Promotional Items shall be received by Metro, 600 NE Grand Avenue, Portland OR 97232-2736 until close of business on March 14, 2013. 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 13-2275)

I. INTRODUCTION

The Procurement Department of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals for inclusion on a list of vendors to provide branded promotional items. Proposals will be due as indicated on this RFP cover page.

The purpose of issuing this Request for Proposal (RFP) is to establish a list of qualified vendors that will be able to provide branded promotional items for all of the departments within Metro. By creating a list of qualified vendors, Metro can more efficiently purchase promotional items without a lengthy proposal process resulting in optimum use of staff time and resources.

Details concerning the Request for Proposal list are contained in this document.

II. BACKGROUND/HISTORY

As the elected regional government for the Portland metropolitan area, Metro works with communities, businesses and residents to create a vibrant and sustainable region for all. Metro works to support a resilient economy, keep nature close by and respond to a changing climate. Together we're making a great place, now and for generations to come.

All of Metro's departments and their individual and diverse programs provide strategic guidance and coordinate a full range of services to advance the Metro Council's goals of great communities, a vital economy and healthy environment.

Developing and executing strategies to effectively inform and motivate Metro's target audiences are at the center of our mission. Departments and their team(s) of on-staff experts work with Metro leadership, managers and community partners to support a wide variety of programs that provide direct services and engage regional governments, leaders and community members through traditional and online media outreach, events, marketing and advertising.

III. SCOPE OF WORK/SCHEDULE

Metro is seeking proposals from qualified firms for promotional branded items for the agency's outreach efforts. Metro uses many different sorts of promotional items. The bulk of our purchases include, but are not limited to:

- BPA-free water bottles
- Reusable coffee travel cups
- Ceramic coffee cups
- Buttons

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- Handkerchiefs
- Custom seed packets
- Reflective straps
- Clip-on blinking lights
- Reusable shopping bags
- Branded pencils and pens
- Magnets
- Bicycling accessories

Since many of these items are used by programs that are promoting the adoption of sustainable behaviors, Metro wants to purchase items that are produced using sustainable resources and sustainable business practices.

As well, items provided to Metro will not contain the following:

- Lead
- PVC (vinyl)
- Mercury
- Heavy metals
- Polystyrene foam (e.g. Styrofoam)

And any food/liquid container items (e.g. water bottles) will not contain:

- Phthalates
- Bisphenol-A

Programs that Metro expects to need branded promotional items include, but are not limited to:

Sustainability Center:

- Natural Areas Programs
- Parks Planning and Development
- Resource Conservation and Recycling

Planning and Development:

- Regional Transportation Planning
- Regional Travel Options Program

Visitor Venues:

- Portland Expo Center

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- Portland Center for the Performing Arts
- Oregon Convention Center
- Oregon Zoo

From this RFP Metro shall select vendors from which to contract branded promotional items for all of Metro's departments and their individual and unique programs. Vendors selected to the list are not guaranteed to receive any certain number or value of assignments. Metro Project Managers will be encouraged to request information, including pricing, from several of the selected vendors when they have a need for promotional items.

The vendors should be proactive in keeping and maintaining the project schedule – when to expect proofs, when review of the proofs must be complete. This vendor shall assume responsibility for any consultant and sub-consultant work, or contractor and subcontractor work and shall be responsible for the day-to-day direction and internal management of the project.

The contract period is anticipated to be March 2013 through February 2016. Two additional one year extensions may be negotiated between Metro and qualified vendors depending on future needs. Contract pricing shall remain fixed for the initial contract year. Contract pricing may be adjusted annually based on market factors with Metro's written approval. Contractor shall provide pricing justification if requested by the Metro Contract Administrator. Metro reserves the right to award additional contracts from this RFP during the above stated term.

IV. QUALIFICATIONS/EXPERIENCE

Proposers shall have the following qualifications and experience:

- At least five (5) years experience providing branded promotional items
- Ability to deliver items within a reasonable time frame

V. PROJECT ADMINISTRATION

Metro's Project Manager shall vary depending on the individual project. Metro's Procurement Department shall administer the contract.

Proposer shall assign a single staff person as the Project Manager to work with Metro. This person shall be responsible for assuring that the services provided as outlined in this RFP are performed properly. Such person(s) shall consult with Metro staff to resolve performance problems. It is the expectation that such qualified persons would be courteous and responsive to calls and e-mail communication within four (4) business hours.

VI. PROPOSAL INSTRUCTIONS

A. Submission of Sealed Proposals

Two (2) paper copies and one (1) electronic version of the proposal shall be furnished to Metro in a sealed envelope,

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addressed to:

Metro Procurement Services
Attn: Julie Hoffman, Procurement Analyst
RFP 13-2275
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 julie.hoffman@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 March 7, 2013.

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 provision 2.04.100, which encourages the use of minority, women and emerging small businesses (MWESB) to the maximum extent practical. Metro Code provision 2.04.100 is available at http://library.oregonmetro.gov/files//chap2.04_clean_eff.042111_revised_version_081711.pdf

VII. PROPOSAL CONTENTS

The proposal should contain no more than nine (9) pages of written material (excluding biographies, resumes and brochures, which may be included in an appendix), describing the ability of the vendor to perform the work requested, as outlined below. The proposal should be submitted on 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, 1 (one) page

Provide the following information:

- Account manager assigned
- Company name and address
- Phone, website and email
- State that the proposal is valid for ninety (90) days
- Request to return materials, if applicable

B. Experience and Approach, 2 (two) pages

Indicate how your company meets the experience requirements and customer service expectations listed in Section III of this RFP. Explain the services your company provides and systems it has in place to meet customer service expectations. Include in this section the Proposed Project Manager's experience, especially as it relates to this sort of work.

Include information on your items or lines of items that:

- use alternate materials or re-use existing materials in their fabrication that result in cost savings
- represent a more environmentally-friendly or sustainable product

C. Examples of work, 1 (one) page

Submit at least three (3) recent examples of items similar to the products and services required in this RFP your company provided within the past three (3) years. These examples shall reflect the type of organization Metro is (see Section II. Background/History and visit www.oregonmetro.gov) . For each example, include the name of the customer, contact person, telephone number, email address, his/her title, and your company's role on the project. Metro staff may contact the customers listed in this response Metro reserves the right to request tangible examples.

D. Pricing, 2 (two) pages

Examples: Provide unit pricing information for the two (2) project examples listed under Exhibit X of this RFP. Pricing for each example must refer to the project example name.

Catalog Pricing: Indicate in your proposal how you will provide pricing on a catalog or variety of items

E. Diversity in Employment and Contracting, 1 (one) page

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.

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Describe a project for which you worked with minorities, women or emerging small businesses. Please provide the project name, method used to achieve participation – for example, joint ventures, subcontracts or purchase of equipment or supplies from a certified firm – and the dollar amount or percentage of the project budget expended on such participation.

Diversity of Firm – Describe the ownership of your firm and whether or not your firm is certified by the State of Oregon as an MBE, WBE, ESB or DBE, provide certification number, if applicable.

F. Sustainable Business Practices, 1 (one) page

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 included, such as vacation, sick leave, pension, disability insurance, profit sharing, childcare, health memberships, company vehicle, public transportation, etc

G. Exceptions to Standard Agreement and RFP

Carefully review the Standard Agreement and Purchase Order Terms and Conditions attached hereto as Exhibit A and incorporated herein. These are the standard agreements that successful respondents to this RFP will be required to execute. The type of agreement depends on the cost of the work being considered. RFP respondents wishing to propose any exceptions or alternative clauses to these agreements 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 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

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

B. Billing Procedures

Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. Contractor's invoices shall include the Metro contract number, an itemized statement of the work done during the billing period, and shall 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

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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 Proposers according to the evaluation criteria.

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
Demonstration of understanding of Metro's mission and work	10
Experience and Approach	20
Examples of work	25
Pricing	15
Diversity in Employment and Contracting	15
Sustainable Business Practices	<u>15</u>
	100%

X. APPEAL OF CONTRACT AWARD

Aggrieved proposers who wish to appeal the award of these 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 Metro Procurement Officer, 600 NE Grand Avenue, Portland, Oregon 97232-2736 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

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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.

Contracts resulting from this RFP may be paid for with federal funds. The proposal must be based on adherence to all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives including but not limited to the following: (1) all applicable terms and conditions set forth in the most recent Federal Transit Administration Master Agreement, (2) 48 CFR part 31, Contract Cost Principles and Procedures, (3) FTA Circular 5010.1D and (4) CFR 225 (OMB Circular A-87) Cost Principles for State, Local, and Indian Tribal Governments.

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.

Pricing Examples

Pricing Example A | T-shirts

- Solid color fabric to match Pantone 152.
- Single color image in white, file provided as eps vector graphic. See example below.
- Organic, pesticide-free cotton.
- Provide pricing for 5,000 at these sizes:

Men's XXXL 250, XXL 250, XL 500, L 500, M 500

Women's XXL 250, XL 250, L 500, M 500, S 500

Children's XL 250, L 250, M 250, S 250

Example:

Front (back blank)

Left sleeve (approx 2" height)

Example:



Pricing Examples

Pricing Example B | Bike seat covers

- Solid color fabric to match Pantone 647.
- Single color image in white, file provided as eps vector graphic. See example below.
- Covers must be of suitable material to protect bike seat from rain and weather.
- Elastic hem to fit around seat.
- Provide pricing for quantities of 5,000; 10,000; and 30,000





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

RFP 13-2275 SAMPLE Goods and Supply Contract

Metro Contract No. XXXXXX

Goods & Supply Less than \$50,000

This Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and Company Name whose address is Street, City State Zip, hereinafter referred to as the "Contractor".

TERM OF CONTRACT

The term of this Contract shall be for the period commencing Month XX, 201X, through and including Month XX, 201X, unless terminated or extended as provided in this Contract.

CONTRACT SUM AND TERMS OF PAYMENT

Metro shall compensate the Contractor for goods supplied as described in Attachment A. Metro shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in Attachment A in an amount not to exceed XXXXXXXXXXX and XX/100ths Dollars (\$XXXXXXXX.XX). Payment shall be on a unit price only for those goods received in an acceptable condition to Metro. Contractor's billing invoices shall include the Metro contract number, Contractor name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of items purchased. Contractor's billing invoices shall be sent to Metro Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736 or metroaccountspayable@oregonmetro.gov. The Metro contract number shall be referenced in the email subject line. Contractor's billing invoices for goods supplied through June 30 shall be submitted to Metro by July 15. Payment shall be made by Metro on a Net 30 day basis upon approval of Contractor invoice.

ATTACHMENT A - Unit Pricing of Goods

Attachment A shall describe the goods purchased under this agreement. Contractor understands and expressly agrees that not all items in Attachment A will be needed. Metro shall have complete discretion to select only those goods needed at the time.

ATTACHMENT B - Delivery and Service Requirements

Delivery shall be to Metro at the designated point f.o.b. as set forth in Attachment B or at Metro docks if no designated point is expressly listed in Attachment B, which is incorporated by this reference as if set forth in full. Metro shall have the right to reject any and all goods or services upon inspection. All other service requirements, including time and place of delivery shall be in accordance with Attachment B.

ALL TERMS ON THE REVERSE SIDE OF THIS DOCUMENT AND OTHER PROCUREMENT DOCUMENTS ARE HEREBY INCORPORATED AS A PART OF THIS AGREEMENT.

CONTRACTOR

METRO

By _____

By _____

Print Name _____

Print Name _____

Date _____

Date _____

RFP 13-2275 SAMPLE Goods and Supply Contract

Metro Contract No. XXXXXX

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I: ATTACHMENT A

CONTRACTOR shall deliver to METRO the goods described attached hereto as Attachment A (Unit Pricing of Goods). All goods shall be of excellent quality.

ARTICLE II: ATTACHMENT B

Title to materials purchased hereunder shall pass to Metro f.o.b. at the designated point in Attachment B (Delivery and Service Requirements), or if not provided for, at the designated Metro docks.

ARTICLE III: LIABILITY AND INDEMNITY

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

ARTICLE IV: TERMINATION

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

ARTICLE V: INSURANCE

CONTRACTOR shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents: 1) 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; 2) Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 per occurrence; 3) Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000 per accident or disease; and 4) 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 INSUREDS on Commercial General Liability and Automobile policies. CONTRACTOR shall provide to Metro 30 days notice of any material change or policy cancellation. CONTRACTOR shall provide Metro with a Certificate of Insurance complying with this article upon return of the CONTRACTOR signed agreement to Metro. Certificate of Insurance shall identify the Metro contract number. Certificate of Insurance shall identify the Metro contract number. CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

ARTICLE VI: PUBLIC CONTRACTS

All applicable provisions of ORS Chapters 187 and 279A &B, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement, including, but not limited to, ORS 279B.220 to 279B.235.

As federal funds may be involved with this Contract, Attachment B, and its Exhibits A and B by this reference are hereby made part of this Contract and incorporated herein as if set forth in full. VENDOR 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) all applicable terms and conditions set forth in the most recent 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.

ARTICLE VII: MODIFICATIONS

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.

ARTICLE VIII: QUALITY OF GOODS

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of excellent quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a

RFP 13-2275 SAMPLE Goods and Supply Contract

period of one (1) year from the date of acceptance or final payment by METRO, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO. In addition to any express warranties provided by the CONTRACTOR, all implied warranties covered by ORS Chapter 72 shall apply to any goods provided under this contract, and are hereby expressly not disclaimed.

ARTICLE IX: SAFETY

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

ARTICLE X: RIGHT TO WITHHOLD PAYMENTS

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

ARTICLE XI: COMPLIANCE

CONTRACTOR shall comply with federal, state and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

ARTICLE XII: INTEGRATION OF CONTRACT DOCUMENTS

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

ARTICLE XIII: 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.

ARTICLE XIV: ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from the Contract without prior written consent from METRO, consent shall not be unreasonably withheld.

ARTICLE XV: SEVERABILITY

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

ARTICLE XVI: COUNTERPARTS

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

ARTICLE XVII: DELIVERY OF NOTICES

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

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

To Metro: **Project Manager Name**
Metro
600 NE Grand Ave
Portland, Oregon 97232
503-**XXX-XXXX** fax

RFP 13-2275 SAMPLE Purchase Order Terms and Conditions



PRODUCTS AND GOODS
PO #XXXX

600 NE Grand Ave., Portland, OR 97232-2736

1. By accepting this purchase order, the vendor agrees to comply with all applicable federal, state and local laws and regulations regarding the product and the procurement process, including all applicable provisions of Oregon Revised Statutes, Chapters 72 and 279.
2. Title to materials and supplies purchased hereunder shall pass to Metro at the designated f.o.b. point, subject to the right of Metro to reject upon inspection. While risk of loss to materials lies with Metro from f.o.b. point and thereafter, vendor remains responsible for the acts and omissions of its agents, employees, subcontractors and/or representatives and for all claims arising therefrom as more fully set forth in condition 7, to the point of delivery of materials. Vendor shall, at its own expense, provide for appropriate and adequate automobile and general liability insurance covering all such acts or omissions to act.
3. No changes in price, quantity or merchandise will be recognized without prior acceptance by Metro.
4. In addition to any express warranties provided by the vendor, all implied warranties covered by ORS Chapter 72 shall apply to any goods provided under this purchase order.
5. Vendor's billing invoices shall include the Metro purchase order number, vendor name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of items purchased and will not be submitted more frequently than once a month. Contractor's billing invoices shall be sent to Metro Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736 or metroaccountspayable@oregonmetro.gov. The Metro purchase order number shall be referenced in the email subject line. Vendor's billing invoices for goods supplied through June 30 shall be submitted to Metro by July 15, Payment shall be made by Metro on a Net 30 day basis upon approval of vendor invoice
6. Vendor is an independent contractor and assumes full responsibility for the content of its work and performance of its labor and for any good supplied to Metro, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to the contract, and shall indemnify and hold harmless Metro, its agents and employees, 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 contract. Vendor is solely responsible for paying vendor's subcontractors, if any. Nothing in this contract shall create any contractual relationship between any subcontractor and Metro.
7. In the event that vendor fails to perform in accordance with the terms of this purchase order and, if no time is specified within a reasonable time after placement of the order, Metro may cancel this order in writing and hold vendor liable for any damage to Metro caused by reason of vendor's failure to perform according to the conditions contained herein.
8. The laws of the state of Oregon shall apply in resolving any issue or interpretation arising under this purchase order.
9. Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail or fax as follows:

To METRO: **Project Manager Name**
Metro
600 NE Grand Ave.
Portland, Oregon 97232
503-XXX-XXXX fax

To CONTRACTOR: **XXXXXX**
Contractor Name
address
City State Zip
XXX-XXX-XXXX fax

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Debarment and Suspension. The Recipient agrees that:

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

- (a) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the following U.S. Office of Management and Budget (U.S. OMB) Guidelines and Executive Order,
- (b) U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, and
- (c) Executive Orders Nos. 12549 and 12689. "Debarment and Suspension," 31 U.S.C. § 6101 note,

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

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

- (a) Federal debarment and suspension requirements, and
- (b) Review the "Excluded Parties Listing System" at <http://epls.gov/>, if needed for compliance with U.S. DOT regulations 2 C.F.R. part 1200. [FTA Master Agreement §3.b]

D. Lobbying Restrictions. The Recipient agrees that:

(1) As provided by 31 U.S.C. §1352(a), it will not use Federal funds to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a Member of Congress, to award or extend the underlying Agreement,

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

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

E. False or Fraudulent Statements or Claims.

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

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

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

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

(b) By executing the underlying Agreement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. Right of the Federal Government to Terminate.

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

- (1) The recipient has violated the underlying Agreement or this Master Agreement, especially if that violation would endanger substantial performance of the Project, or
 - (2) Any failure to make reasonable progress on the Project, or
 - (3) The Federal Government determines that the continuation of the Federal funding for the Project does not adequately serve the purposes of the law authorizing the Project.
- b. Financial Implications. The Recipient agrees that:
- (1) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled.
 - (2) The Federal Government may require the Recipient to refund the entire amount of the Federal funds provided for the Project or any lesser amount as the Federal Government may determine, if the Federal Government determines that the Recipient has willfully misused Federal funds by:
 - (a) Failing to make adequate progress,
 - (b) Failing to make appropriate use of Project property, or
 - (c) Failing to comply with the underlying Agreement or this Master Agreement
- c. Expiration of Project Time Period. Except in the case of Full Funding Grant Agreements, expiration of any Project time period established for the Project does not, by itself, constitute and expiration or termination of the underlying Agreement. *[FTA Master Agreement §11]*

H. Civil Rights.

The Recipient understands and agrees that it must comply with all Federal civil rights laws and regulations, and follow Federal directives, except as the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

- a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each third party participant will, comply with Federal transit law, specifically 49 U.S.C. § 5332, which prohibits the following:
- (1) Types of Discrimination.
 - (a) Exclusion from participation,
 - (b) Denial of program benefits, or
 - (c) Discrimination, including discrimination in employment or business opportunity,
 - (2) Basis for Discrimination:
 - (a) Race,
 - (b) Color,
 - (c) Creed,
 - (d) National origin,
 - (e) Sex, or
 - (f) Age.
- b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each third party participant will, prohibit discrimination on the basis of race, color, or national origin and:

(1) Comply with:

- (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*,
- (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21 and
- (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 12.a, and

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

c. Equal Employment Opportunity.

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

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

(2) General. Recipient agrees to

- (a) Ensure that applicants for employment and employees are treated during employment without discrimination on the basis of their:
 - 1 Race,
 - 2 Color,
 - 3 Creed,
 - 4 Sex,
 - 5 Disability,
 - 6 Age, or
 - 7 National origin.
- (b) Take affirmative action that includes, but is not limited to:
 - 1 Recruitment Advertising,
 - 2 Recruitment,
 - 3 Employment,
 - 4 Rates of pay,
 - 5 Other forms of compensation,
 - 6 Selection for training, including apprenticeship,

- 7 Upgrading,
- 8 Transfers,
- 9 Demotions,
- 10 Layoffs, and
- 11 Terminations.

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

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

(b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and

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

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

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

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

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

(2) Assurance. The Recipient assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any third party agreement supported with Federal funds derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps provided in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party agreements supported with Federal funds derived from U.S. DOT. If U.S. DOT has approved the Recipient's DBE program, that DBE program is incorporated by reference and made part of the underlying Agreement. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out its DBE program shall be treated as a violation of the underlying Agreement and this Master Agreement. If U.S. DOT finds and notifies the Recipient that it has not implemented its approved DBE program, U.S. DOT may impose sanctions provided by the underlying Agreement 49 C.F.R. Part 26, and in certain cases, seek enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*, or both.

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with the following Federal prohibitions against discrimination on the basis of sex:

(1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*,

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, and

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

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

(1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination against individuals on the basis of age,

(2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which implements the ADEA,

(3) The Age Discrimination Act of 1975, as amended, 42 U.S.C.6101 *et seq.*, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds,

(4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which implements the Age Discrimination Act of 1975, and

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

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

(1) The following Federal laws:

(a) 49 U.S.C. § 5301(d), which acknowledges that elderly individuals and individuals with disabilities have the same right as others to use public transportation, and that special efforts must be made to plan and assure that they do have similar access to public transportation,

(b) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,

(c) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C.12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities;

(d) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities;

(e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,

(2) The following Federal regulations:

(a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37,

(b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27,

- (c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38,
- (d) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35,
- (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36,
- (f) U.S. General Services Administration (U.S.GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19,
- (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630,
- (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F,
- (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194,
- (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(3) Other applicable Federal civil rights and nondiscrimination directives.

h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of:

- (1) Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.*,
- (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. 4541 *et seq.*, and
- (3) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd through 290dd-2.

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by:

- (1) Facilitating compliance with and following Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and
- (2) Following U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except as the Federal Government determines otherwise in writing.

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

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

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

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

l. Preference for United States Products and Services.

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

a. Fly America. Air transportation requirements of:

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

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

J. Procurement.

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

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

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

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

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

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

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

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

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

K. Patent Rights.

a. General. The Recipient agrees that:

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

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

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

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

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

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

b. Federal Rights. The Recipient agrees that:

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

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

- (a) 35 U.S.C. 200 *et seq.*, and
- (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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

(1) License fees and royalties for patents, patent applications, and inventions derived from Project are program income.

(2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except:

(3)

- (a) For compliance with 35 U.S.C. 200 *et. seq.*, which applies to patent rights developed under a federally funded research-type project, and
- (b) As FTA determines otherwise in writing. [FTA Master Agreement §17]

L. Rights in Data and Copyrights.

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

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

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

- (1) Prohibitions. The Recipient may not:
 - (a) Publish or reproduce subject data in whole or in part, or in any manner or form, or
 - (b) Permit others to do so.
- (2) Exceptions. The prohibitions of the preceding Section 18.b (1) of this Master Agreement do not apply:
 - (a) to the public, or
 - (b) To publications or reproductions for the Recipient's own internal use,
 - (c) To an institution of higher learning
 - (d) To the portion of data that the Federal Government has previously released or approved for release to the public, or
 - (e) To the portion of data that has the Federal Government's prior written consent for release.

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

- (1) License Rights. The Recipient must provide the Federal Government a license to "subject date" that is:
 - (a) Royalty-free,
 - (b) Non-exclusive, and
 - (c) Irrevocable.

- (2) Uses. The Federal Government's license must permit it to:
- (a) Reproduce the subject data,
 - (b) Publish the subject data,
 - (c) Otherwise use the subject data, and
 - (d) Permit others to use the subject data for Federal Government purposes.
- (3) Federal Government Purposes. As used in this Section 18 of the Master Agreement, "for Federal Government purposes," means that:
- (a) The Federal Government may use its license only for its own direct purposes, and
 - (b) The Federal Government may not provide or otherwise extend to other parties, without the copyright owner's consent its license to:
 - (1) Any subject data developed and funded at any tier through the underlying Agreement, and
 - (2) Any rights of copyright to which the Recipient or third party participant purchases ownership using Federal funds.

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

Therefore, the Recipient agrees that:

- (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet.
 - (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request.
 - (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its third party participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as FTA determines otherwise in writing.
 - (4) Identification of Information. It must identify clearly any specific confidential, privilege, or proprietary information submitted to FTA.
 - (5) Incomplete Project. If this Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct.
 - (6) Exception. This Section 18.d does not apply to any adaptation of automatic data processing equipment or program that is both:
 - (a) For the Recipient's use and,
 - (b) Acquired with FTA capital program funding.
- e. License Fees and Royalties. As permitted by 49 C.F.R. Parts 18 and 19:
- (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income.
 - (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except:

- (a) For compliance with 35 U.S.C. 200 *et seq.*, which applies to patent rights developed under a federally funded research-type project, and
- (b) As FTA determines otherwise in writing.
- f. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that:
- (1) Violation by Recipient. Except as prohibited or otherwise limited by State law, it will indemnify, save, and hold harmless the Federal Government's officers, employees, and agents acting within the scope of their official duties, against any liability, including costs and expenses,
- (a) If it willfully or intentionally violates:
1. Any proprietary rights,
 2. Copyrights, or
 3. Right of privacy,
- (b) Occurring from any of the following uses of Project data:
1. Publication,
 2. Translation,
 3. Reproduction,
 4. Delivery,
 5. Use, or
 6. Disposition.
- (2) Violation by Federal Officers, Employees or Agents. The Recipient will not be required to indemnify the Federal Government for any liability described in the preceding Section 18.f (1) caused by the wrongful acts of Federal; employees or agents.
- g. Restrictions on Access. To Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data either:
- (1) Implies a license to the Federal Government under any patent, or
- (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- h. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that it may need to provide data developed without any Federal funding or support to FTA.
- (1) Protections. Sections 18.a, 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project.
- (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding or support from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."
- i. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by:
- (1) The Freedom of Information Act, 5 U.S.C. § 552,
 - (2) Another Federal law requiring access to Project records,

(3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or

(4) Other Federal regulations requiring access to Project records. [FTA Master Agreement §18]

M. Environmental Protections.

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

- (1) Public Transportation Operators. It will comply with:
 - (a) U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85;
 - (b) U.S. EPA regulations "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86, and
 - (c) U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600 and any revisions to these regulations.
- (2) State Implementation Plans. It will support State Implementation Plans (SIP) by:
 - (a) Implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Project,
 - (b) Assuring that any Project identified as a Transportation Control Measure in its State's SIP will be wholly consistent with the design concept and scope of the Project described in the SIP,
 - (c) Complying with:
 1. Subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c),
 2. U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A, and
 3. Other Federal conformity regulations that may be promulgated at a later date.
- (3) Violating Facilities. It will:
 - (a) comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and
 - (b) facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

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

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

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

N. Energy Conservation.

The Recipient agrees to

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

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

O. 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, the Recipient agrees that:

a. Notification to FTA. It will notify the FTA Chief Counsel or Regional Counsel immediately of any current or prospective legal matter:

- (1) Such as:
 - (a) A major dispute,
 - (b) A breach,
 - (c) A default,
 - (d) Litigation, or
 - (e) Naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason,
- (2) That may affect the Federal Government's:
 - (a) Interest in the Project, or
 - (b) Administration or enforcement of Federal laws or regulations.

b. Federal Interest in Recovery.

(1) General. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the Federal share for the Project,

(2) Liquidated Damages. However, the Recipient may return all liquidated damages it receives to its Project Account rather than return the Federal share of those liquidated damages to the Federal Government.

c. Enforcement. It will pursue its legal rights and remedies available under any third party agreement or available under Federal, State, or local laws or regulations.

d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of a 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 §56]*

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Clauses

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned **VENDOR** 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 VENDOR, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the VENDOR 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 VENDOR's Authorized Official

Name (Printed)

Title

Date

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Clauses

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

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

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

By signing and submitting this contract, the VENDOR certifies as follows:

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

Signature _____

Name _____

Title _____

Organization _____

Date _____