



## **Multicultural Communications and Marketing Services**

### **RFP 12-2049**

#### **Metro Communications Department**

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

#### **Project Manager**

Katie Edlin  
katie.edlin@oregonmetro.gov  
503-813-7575

#### **Procurement Analyst**

Sharon Stiffler, CPPB  
sharon.stiffler@oregonmetro.gov  
503-797-1613

Notice is hereby given that proposals for RFP 12-2049 for Multicultural Communications and Marketing Services shall be received by Metro, 600 NE Grand Avenue, Portland OR 97232 until close of business on February 24, 2012 is the sole responsibility of the proposer to ensure that Metro receives the Proposal by the specified date and time. All late Proposals shall be rejected. Proposers shall review all instructions and contract terms and conditions.



## Request for Proposals (RFP 12-2049)

---

### **I. INTRODUCTION**

The Communications Department of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals from qualified consultants and/or firms to provide a variety of services related to culturally competent and multicultural engagement, communication and outreach to families who speak Spanish, Russian, Laotian and other Asian languages. Proposals will be due as indicated on the RFP cover page.

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

### **II. BACKGROUND/HISTORY OF PROJECT**

Metro, the regional government, crosses city limits and county lines to build a resilient economy, keep nature close by and respond to a changing climate. Representing a diverse population of 1.5 million people in 25 cities and three counties. Metro's directly elected council gives voters a voice in decisions about how the region grows and communities prosper. To achieve that mission, Metro offers a wide variety of programs and services, ranging from solid waste disposal and recycling to land use planning. As the region grows in population and diversity, it is necessary for Metro to continue to adapt and modify program communications to reach as many audiences and populations as possible.

Metro intends to award contracts to multiple qualified vendors to provide comprehensive, multicultural communication services for several programs. By creating a pool of qualified vendors, Metro can more efficiently retain such services without a lengthy proposal process for each project or job, resulting in optimum use of staff time and services. Programs that Metro expects to use multicultural communication services include but are not limited to: sustainable living programs, Opt In panel, transportation projects, parks and natural areas, garbage and solid waste, MetroPaint, pioneer cemeteries, and visitor venues such as the Portland Expo Center, Portland Center for the Performing Arts, the Oregon Convention Center and the Oregon Zoo. Successful applicants will help Metro promote and raise awareness of Metro's services and products using a strategic, results-focused marketing and communications approach. Once engaged, contractors will help guide Metro on best practices for outreach and engagement with Metro's increasingly diverse customer base. This work will be guided by Metro's values, mission statement and Diversity Action Plan.

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

Metro is seeking proposals from qualified firms, consultants and specialists to perform the services and to deliver the products described below. Successful proposers will be required to execute a Personal Services Agreement ("PSA") in the form attached hereto as Exhibit A. See pages 12 through 21.

Services will be provided on an as-needed basis beginning March 2012 and ending in February 2014. One or two-year extensions may be negotiated between Metro staff and qualified vendors depending on future needs.



## Request for Proposals (RFP 12-2049)

---

Metro intends to award contracts to multiple firms, consultants and/or specialists. Awarded firms, consultants and specialists are not guaranteed to receive any certain number or value of assignments. Estimated contract award amounts will vary from \$5,000 to \$75,000 per contract term depending on need.

Some future work orders or contracts may be issued for work that will be paid for with federal funds. In such cases, certain federal contracting requirements exist. Please see Section 12 of the attached Personal Services Agreement (Exhibit A) for those and other contracting requirements.

### **Project goals**

- Help position Metro as a leader and trusted expert in sustainable information, practices and services.
- Connect with diverse audiences to initiate behavior changes that benefit the environment and create sustainable and prosperous communities.
- Increase awareness and use of Metro's sustainable living programs, resources, programs and venues.
- Increase the effectiveness of Metro's sustainability messaging and outreach efforts, with focus on a diverse audience.
- Establish a framework to measure results and evaluate effectiveness of communications, outreach and engagement practices.

### **Metro sustainability and diversity goals**

- Help Metro increase the number of people in diverse audiences adopting sustainable behaviors and engaging with Metro programs and initiatives.
- Help Metro increase awareness of, participation in and satisfaction with Metro sustainability programs and services as well as other Metro initiatives, such as Opt In or the natural areas campaign, to name a few.
- Increase the public's awareness and trust of Metro by aligning marketing efforts with the agency's commitment to sustainable living, engagement and diversity.

### **Services and deliverables**

Qualified firms must be able to perform one or more of the following services:

- Provide multicultural communication services, such as translation and trans-creation of materials and campaigns to help Metro communicate more effectively with multicultural families who speak Spanish, Russian and a variety of Asian languages, depending on project and area.
- Develop culturally competent campaigns with messages, collateral pieces and outreach activities to connect with diverse audiences.
- Provide graphic design and layout services; message strategy; production and purchasing of advertisements for TV, radio and print; and printing services for primarily Spanish, Russian and Asian languages, including but not limited to Chinese, Vietnamese and Laotian..



**Metro**

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

## Request for Proposals (RFP 12-2049)

---

- Provide recommendations and guidance to Metro programs on how to more effectively connect with families in culturally competent ways using:
  - public engagement tools
  - community profiles, stakeholder interviews and fact finding
  - survey work, focus groups (convene/facilitate groups to determine project course based on the community's needs)
  - sponsorship and partnership opportunities with community groups and organizations (schools, churches, non-profits, businesses)
  - communications campaigns, including media production and media buys (see additional information below)
  - public relations
  - social media
  - strategic planning
  - direct mail marketing
  - cultural competency training
  - event marketing (designing, staging and managing culturally appropriate events and promotion)
  
- Identify opportunities, negotiate and place media buys. Confirm ads run as scheduled. May include paying invoices for media buys. Disclose commissions.
- Prepare and provide information on media outlet descriptions, reach, rankings and audience demographics; recommendations for buys based on coverage, cost and overall value; and schedule recommendations, including costs and deadlines for any required production of spots.
- Recommend, negotiate, purchase and place media buys for promotional campaign. This includes forwarding traffic instructions and defining any required ad rotations, tag copy and cutoff times.
- In consultation with Metro staff, investigate, develop and implement value-added airtime, web and print opportunities – including community or corporate partnerships – as applicable to the campaign and available through the respective outlets.
- Prepare and submit monthly written progress reports and prepare and submit a final written report identifying and evaluating campaign activities, successes and lessons and recommending future strategies and tactics.
- Secure make-good spots or credits, as applicable.
- Verify all media-buy invoices, reconciling with traffic instructions and checking for fair spot rotations (if appropriate) among all purchased time periods.



**Metro**

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

## Request for Proposals (RFP 12-2049)

---

### IV. QUALIFICATIONS/EXPERIENCE

Proposers shall have at least three (3) years experience providing one or more of the following services:

- Developing effective and measured marketing and communications plans for diverse audiences using a variety of techniques and approaches that are authentic and meaningful to the audience's ethnicity, culture and background.
- Crafting effective and measurable outreach and engagement campaigns and efforts to connect with diverse audiences.
- Providing translation services, writing and copy-editing in English and other languages including, but not limited to, Spanish, Russian and a variety of Asian languages.
- Providing and consulting on effective messaging, including testing of messages.
- Providing market research, demographic profiles and consultation to assist Metro in effectively reaching diverse audiences.
- Producing quality graphic design, copy writing, multimedia elements, print collateral.
- Measuring the success of communications and marketing investments.
- Developing, implementing, monitoring, adjusting and evaluating media-buying strategies on a modest budget to promote products and services to selected audiences.
- Negotiating, purchasing and placing television, radio, web and print buys to advertise products and services.
- Advising clients on optimal placement and scheduling of advertisement and other promotional content in accordance with a project's goals, audience, strategies, timeline and budget.
- Coordinating with multiple parties to meet deadlines.

### V. PROJECT ADMINISTRATION

Under direction of Metro's management team, a designated point person from Metro will manage resulting contracts and provide assistance as necessary to ensure the objectives of each contract are achieved. Contractors will not proceed with work until a written work order assignment, properly executed by Metro, has been received. Metro staff will assign and manage work of Contractors. Metro staff shall have direct contact with Contractor's staff who will be performing the work.



**Metro**

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

## Request for Proposals (RFP 12-2049)

---

### VI. PROPOSAL INSTRUCTIONS

#### A. Submission of Sealed Proposals

Two (2) print copies and an electronic copy on DVD of the proposal shall be furnished to Metro in a sealed envelope, addressed to:

Metro Procurement Services  
Attn: Sharon Stiffler RFP 12-2049  
600 NE Grand Avenue  
Portland, OR 97232-2736

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

#### C. RFP as Basis for Proposals

This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any verbal information which is not addressed in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be addressed to Sharon Stiffler, [sharon.stiffler@oregonmetro.gov](mailto:sharon.stiffler@oregonmetro.gov). Any questions, which in the opinion of Metro, warrant a written reply or RFP addendum will be furnished to all parties receiving this RFP. Metro will not respond to questions received after 3:00 p.m. on February 20, 2012.

#### 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.



## Request for Proposals (RFP 12-2049)

---

F. Pre-Proposal Conference

A voluntary pre-proposal conference will be held at Metro, 600 NE Grand Ave., Room 270, Portland, Oregon 97232 on Tuesday, February 14, 2012 from 12:30 p.m. to 2 p.m. Interested proposers are encouraged to attend the conference in order to gain information about the RFP requirements.

### VII. PROPOSAL CONTENTS

The proposal should contain no more than twelve (12) pages of written material, 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. In the interest of sustainable business practices, Metro encourages the use of materials (i.e. paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content and are readily recyclable. Metro discourages the use of materials that cannot be readily recycled such as PVC (vinyl) binders, spiral bindings and plastic or glossy covers or dividers.

A. Transmittal letter (one page): Provide the following information:

Account manager/Project manager assigned

Company name and address

Phone, website and email

State certification number, if any, as a minority-owned, women-owned, disadvantaged or emerging small business.

Request for return of work samples, if necessary

State that the proposal is valid for ninety (90) days

B. Staffing (two pages): 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. Please include the number of employees who are employed by your agency/company. Provide a one-paragraph description of your internal teams across your agency/company. Include résumés of individuals proposed for this contract in an appendix, if needed.

C. Cost (one page): Provide hourly rates for the following services, in requested order:

- Account management
- Strategy, message development
- Writing
- Art direction
- Graphic design
- Media buying

List any additional fee structures as it relates to the services and products listed in Section III of this RFP, include any annual administration, per item, transaction fees or reimbursable expenses.



**Metro**

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

## Request for Proposals (RFP 12-2049)

---

- D. Approach/Project Work Plan (three pages): Describe (i) how the proposing agency approaches multicultural marketing and communications projects and (ii) the process Metro will experience working with the proposing agency to accomplish the work set forth in Section III of this RFP.
- E. Experience/Examples of Work (three pages plus work samples): Provide previous work samples and campaigns that demonstrate how proposer can meet requirements listed in Section III and IV. Sample projects/campaigns provided should have been conducted within the last three years and involved services similar to the services required in this RFP. For each sample campaign/project, provide the following information on a one-page, typed cover sheet:
- The project/case study. Describe the project, the tactic and how success was measured.
  - References for each project—the client's name, title, role on the project, email address and telephone number
  - Identify employees/persons on the proposed project team who worked on each of the projects listed, and list their respective roles.

To the cover sheet, attach relevant work samples that relate to each project/campaign. Provide up to three (this conflict with next paragraph request of 3) work samples pieces for each project/campaign that showcase graphic design, writing, multimedia and video production, ad campaigns or tactics, online and print communication pieces. If applicable, include links to online portfolios, or a CD/DVD. Work sample documents will be returned to Proposer if so requested in the transmittal letter submitted to Metro.

Three (3) work sample packets should be submitted. Packets include One (1) typed cover page with attached work samples, up to five (5) pieces.

- F. Diversity in employment and contracting (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. 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, DBE or ESB. Provide certification number, if applicable.

- G: Sustainable Business Practices (one page):





## Request for Proposals (RFP 12-2049)

---

- **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 Personal Services Agreement and RFP: Carefully review the standard Personal Services Agreement attached hereto as Exhibit A and incorporated herein. This is the standard contract that successful respondents to this RFP will be required to execute. RFP respondents wishing to propose any exceptions or alternative clauses to the standard Personal Services 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 after the contract has been awarded. Proposed exceptions or alternative clauses to the standard Personal Services Agreement should be accompanied by explanatory comments that are succinct, thorough and clear.

### VIII. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.
- B. Billing Procedures: Proposers are informed that the billing procedures of the selected firms are subject to the review and prior approval of Metro before reimbursement of services can occur. Contractor's invoices shall include the Metro contract number, an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Payment shall be made by Metro on a Net 30-day basis upon approval of Contractor invoice.
- C. Validity Period and Authority: The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.



**Metro**

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

## Request for Proposals (RFP 12-2049)

---

- D. Conflict of Interest. A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.
- E. Equal Employment and Nondiscrimination Clause Metro and its contractors will not discriminate against any person(s), employee or applicant for employment based on race, color, religion, sex, national origin, age, marital status, familial status, gender identity, sexual orientation, disability for which a reasonable accommodation can be made, or any other status protected by law. Metro fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. For more information, or to obtain a Title VI Complaint Form, see [www.oregonmetro.gov](http://www.oregonmetro.gov).
- F. Federal Funds Agreements resulting from this RFP may be funded with federal funds. The proposal must be based on adherence to all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives including but not limited to the following: (1) all applicable terms and conditions set forth in the most recent Federal Transit Administration Master Agreement ,(2) 48 CFR part 31, Contract Cost Principles and Procedures, (3) FTA Circular 5010.1D and (4) CFR 225 (OMB Circular A-87) Cost Principles for State, Local, and Indian Tribal Governments. See Attached Exhibit B for applicable federal funding clauses.
- G. 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). Awards will be made to the highest ranked Proposers according to the evaluation criteria.



# Request for Proposals (RFP 12-2049)

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.

	<u>Percentage of Total Score</u>
1. Demonstration of understanding of Metro's mission and project areas	10
2. Firm/consultant's experience and staffing	15
3. Fee structure/rates	15
4. Approach/Project work plan	15
5. Examples of work	25
6. Diversity Work Force Diversity, Diversity in Contracting, Diversity of Firm	10
7. Sustainable Business Practices Environmental Impact, Support of local business and markets, Employee compensation structure	10
	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 PERSONAL SERVICES AGREEMENT**

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



# Request for Proposals (RFP 12-2049)

## PERSONAL SERVICES AGREEMENT EXAMPLE

THIS PERSONAL SERVICES AGREEMENT ("Agreement" or "PSA") is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, OR 97232-2736, and \_\_\_\_\_, referred to herein as "Contractor," located at \_\_\_\_\_

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

1. **Initial Term; Renewal.** This Agreement shall be effective March 2012 and shall remain in effect until and including February 2014, unless terminated or extended as provided in this Agreement. This Agreement may be renewed or extended in writing for one additional two-year period at Metro's sole discretion.
2. **Flexible Services RFP for Metro Communications.** Contractor is one of the several successful respondents to that certain RFP issued by Metro in January 2011 entitled *Multicultural Communications and Marketing Services* ("RFP 12-2049" or "RFP"), which stated that "it is the intent of Metro to create a pool of qualified firms, consultants and specialists with whom to engage to provide professional multicultural communications and marketing services." The terms and conditions of RFP 12-2049 are hereby incorporated herein by reference. To the extent that this Agreement and the RFP conflict, this Agreement shall govern.
3. **Scope of Work/As-Needed Basis.** On an as-needed basis and upon written request from Metro as specified in Section 4 below, Contractor shall provide some or all of the services set out in the RFP.
4. **Work Orders.** During the term of this Agreement Metro may provide Contractor with written requests for estimates for specific assignments pursuant to this Agreement on an as-needed basis ("Work Order Request"). The Work Order Request will include a detailed description of the services to be provided, products produced, specifications and a time period in which to complete the services requested. After receiving a Work Order Request, Contractor shall provide Metro staff with a written, "not-to-exceed" Proposal including all cost and fees to complete the specified work. Contractor may not proceed with any work until a written Work Order has been provided by Metro to Contractor setting forth the specifics of the work to be produced and "not to exceed" amount to be charged by Contractor.
5. **Payment.** Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Work Orders. Payment shall be made by Metro on a Net 30 basis upon approval of Contractor invoice.
6. **Insurance.** Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
  - (a) The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. Contractor's coverage will be primary as respects Metro;
  - (b) Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 per occurrence;
  - (c) Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000 per accident or disease; and
  - (d) If required by the Scope of Work, Professional Liability Insurance, with limits of not less than \$1,000,000 per occurrence, covering personal injury and property damage arising from errors, omissions or malpractice.

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

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

# Request for Proposals (RFP 12-2049)



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

7. 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.

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

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

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

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

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

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

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



## Request for Proposals (RFP 12-2049)

- 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.
9. 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.
10. 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.
11. 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.
12. 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 may be 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
13. 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.
14. 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.
15. 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

# Request for Proposals (RFP 12-2049)



**Metro**

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

incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

16. 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.

17. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

CONTRACTOR

METRO

By \_\_\_\_\_

By \_\_\_\_\_

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

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

Date \_\_\_\_\_

Date \_\_\_\_\_

Example



## Request for Proposals (RFP 12-2049)

### PERSONAL SERVICES AGREEMENT EXAMPLE FOR RTO PROJECTS

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

#### **A. Recitals**

Metro is the recipient of Federal Transit Administration (FTA) Congestion Mitigation and Air Quality (CMAQ) funds, and wishes to enter into this Agreement with the Contractor, utilizing these federal funds.

Metro considers the Contractor to be a subrecipient of federal funds. Funding for this project is obtained from an Agreement between Metro and the FTA, utilizing Congestion Mitigation and Air Quality (CMAQ) funds, CFDA No. 20.507.

The Regional Travel Options Program, hereinafter referred to as the "RTO Program" is a program of Metro designed to assist local governments in managing demand on the transportation system and increasing use of travel options.

#### **B. Effective Date and Duration**

The beginning date of this Agreement is \_\_\_\_\_, and shall remain in effect until and including \_\_\_\_\_, unless terminated or extended as provided in this Agreement. Costs incurred after \_\_\_\_\_, which are deemed allowable costs for this project, will be reimbursed once all parties have signed this Agreement and Metro has been presented with the appropriate invoice and documentation.

#### **C. Scope of Work**

Contractor shall provide all services and materials specified in the attached "Exhibit A – Scope of Work," which is incorporated into this Agreement by reference. Contractor in accordance with the Scope of Work shall provide all services and materials, in a competent and professional manner. To the extent that the Scope of Work contains additional Agreement provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.

#### **D. Compensation**

The total Agreement amount is \_\_\_\_\_ **AND NO/100<sup>TH</sup>S DOLLARS (\$\_\_\_\_\_00)** which is comprised of the maximum amount of FTA funds to be dispersed to the Contractor not to exceed \_\_\_\_\_ **AND NO/100<sup>TH</sup>S DOLLARS (\$\_\_\_\_\_00)** and local match provided by Contractor of \_\_\_\_\_ **AND NO/100<sup>TH</sup>S DOLLARS (\$\_\_\_\_\_00)**.

All invoice payments are conditional upon Metro's Project Manager approval of the Quarterly Progress Reports.

Qualified costs are direct project costs, incurred by the Contractor and personal services contractor(s) during the term of this Agreement that are eligible for federal funds.

The Contractor shall present cost reports, reimbursement requests and progress reports to Metro's RTO Administrator on a quarterly basis. The Contractor shall not submit requests for payments that exceed \_\_\_\_\_ **AND NO/100<sup>TH</sup>S DOLLARS (\$\_\_\_\_\_00)**, unless otherwise authorized to do so by future amendments to this Agreement.



# Request for Proposals (RFP 12-2049)

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

Invoices shall display one hundred percent (100%) of the total project costs incurred during the period of the invoice, and identify any required matching amounts, if applicable. *Documentation, when requested, must be received by Metro before payment will be made, and may include copies of receipts for expenditures, timesheets, or system-generated accounting reports documenting the actual expense.*

## **E. Subcontracts and Assignment – Successors and Assigns**

Contractor shall not enter into any subcontracts for any of the Services required by this Agreement, or assign or transfer any of its interest in this Agreement, without Metro's prior written consent. In addition to any other provisions Metro may require, Contractor shall include in any permitted subcontract under this Agreement a requirement that the subcontractor be bound by Sections E, G, I and O of this Agreement as if the subcontractor were the contractor.

Metro's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Agreement. Payment under the terms of this Agreement will be made to the Contractor and subcontractors have no right to payment directly from the Metro.

Contractor agrees to include adequate provisions in their Agreements with their subcontractors to ensure compliance with those Federal laws, regulations, and directives as directed by the FTA Master Agreement Section 2(e).

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.

## **F. Records Maintenance – Access**

Contractor shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance.

Contractor acknowledges and agrees that Metro, the FTA, the Comptroller General of the United States and/or their duly authorized representatives shall have access to such fiscal records and other books, documents, timesheets, papers, plans and writings of Contractor that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts.

Contractor shall retain and keep accessible all such fiscal records, books, documents, timesheets, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

## **G. 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 Agreement.

Contractor 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, including attorney's fees, whether before the commencement of litigation at trial or on appeal, arising out of or in any way connected with its performance of this Agreement.

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.

# Request for Proposals (RFP 12-2049)



Contractor is solely responsible for the acts and omissions of its' agents, employees, subcontractors, and/or representatives and for all claims.

## **H. Termination**

Metro may terminate this Agreement 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.

## **I. Insurance**

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

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;

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

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

(d) If required by the Scope of Work, Professional Liability Insurance, with limits of not less than \$1,000,000 per occurrence, covering personal injury and property damage arising from errors, omissions or malpractice.

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

Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers.

Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be sent to the Project Manager, in lieu of the certificate showing current Workers' Compensation.

Contractor shall provide to Metro thirty (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.

## **J. 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.

# Request for Proposals (RFP 12-2049)

**Metro**600 NE Grand Ave.  
Portland, OR 97232-2736  
503-797-1700**K. Attorney's Fees**

In the event of any litigation concerning this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

**L. Quality of Goods**

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. Contractor guarantees all work against defects in material or workmanship for a 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 Agreement, and are hereby expressly not disclaimed.

**M. Safety**

If services of any nature are to be performed in connection with the provision of 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 Material Safety Data (MSD) sheets shall accompany the goods.

**N. 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.

**O. Compliance**

This Agreement is subject to a financial assistance Agreement between Metro and the Federal Transit Administration (FTA). 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 but not limited to the following, which are incorporated into and made a part hereof:

(1) the terms and conditions applicable to a "recipient" set forth in the October 1, 2011 FTA Master Agreement [FTA MA 18] between Metro and the FTA;

(2) 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(3) 2 CFR 225, Cost Principles for State, Local, and Indian Tribal Governments

(4) FTA Circular 5010.1D.

Contractor shall also comply with federal, state, and local laws, statutes, and ordinances relative to, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

# Request for Proposals (RFP 12-2049)

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

**P. *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 Agreement are hereby expressly incorporated by reference.

Otherwise, this Agreement represents the entire and integrated agreement between Metro and Contractor and supersedes all prior negotiations, representations or Agreements, either written or oral. This Agreement 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 Agreement.

**Q. *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.

**R. *Ownership of Documents***

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

**S. *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.

**T. *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.

**U. *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.

# Request for Proposals (RFP 12-2049)



**Metro**

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

**V. *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.

**W. *Modification***

Notwithstanding and succeeding any and all prior Agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

CONTRACTOR, BY EXECUTION OF THIS AGREEMENT TO AGREE, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS AGREEMENT TO AGREE, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**Contractor**

**Metro**

By \_\_\_\_\_

By \_\_\_\_\_

Written \_\_\_\_\_

Written \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Example

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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]*

I. 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.

Example

(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 data" that is:

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

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

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

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

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

- (1) Any subject data developed and funded at any tier through the underlying Agreement, and
- (2) Any rights of copyright to which the Recipient or third party participant purchases ownership using Federal funds.

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

Therefore, the Recipient agrees that:

- (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet.
- (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request.

- (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its third party participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as FTA determines otherwise in writing.
- (4) Identification of Information. It must identify clearly any specific confidential, privilege, or proprietary information submitted to FTA.
- (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]*

Example

**CERTIFICATION REGARDING LOBBYING**  
Certification for Contracts, Grants, Loans and Cooperative Agreements

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, **[REDACTED]**, 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

Example

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

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

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

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

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

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Organization \_\_\_\_\_

Date \_\_\_\_\_

Example