

**GREATER PORTLAND TRANSIT DISTRICT (METRO)  
REQUEST FOR PROPOSALS  
MARKETING AND CREATIVE SERVICES FOR  
FARE INCREASE AND AUTOMATED FARE PAYMENT SYSTEM  
RFP #2019-002**

Greater Portland Transit District is accepting sealed proposals for MARKETING AND CREATIVE SERVICES FOR FARE INCREASE AND AUTOMATED FARE PAYMENT SYSTEM. Proposals should be submitted in a sealed envelope, clearly marked as “RFP #2019-002, MARKETING AND CREATIVE SERVICES,” and be received at METRO offices, 114 Valley Street, Portland, ME 04102, no later than Thursday, **March 21, at 1:30 p.m.** Proposals received after that date and time will not be accepted.

Firms must be registered with METRO in order to submit a package. Receipt of this document directly from METRO indicates registration. Should a firm receive this Request from a source other than METRO, please contact 207-517-3020 or [lshaw@gpMETRO.org](mailto:lshaw@gpMETRO.org) to ensure that your firm is listed as a vendor for this RFP.

**GENERAL SCOPE**

METRO is accepting proposals for Marketing and Creative Services to assist with marketing and public education for two initiatives. In late summer of 2019, METRO plans to increase fares, in conjunction with the implementation of a mobile fare payment system. Subsequent to that, in early 2020, METRO plans to implement a restructuring of fare types and expand automation to include smart card technology.

Firms must be registered in order to submit a proposal. To register, email [lshaw@gpmetro.org](mailto:lshaw@gpmetro.org) or call 207-517-3020. Receipt of this document directly from METRO indicates registration. Should a firm receive this Request from a source other than METRO, please contact METRO to ensure that your firm is listed as a vendor for this RFP.

**QUESTIONS**

All questions should be made in writing and directed to by e-mail to [lshaw@gpmetro.org](mailto:lshaw@gpmetro.org) and be received **no later than Tuesday, March 12, 2019**. Questions received after this time will not be addressed. Responses from METRO that substantially alter this RFP will be issued in the form of a written addendum.

**FEDERAL REQUIREMENTS**

METRO receives funding from the Federal Transit Administration and, as such, is required to follow federal procurement regulations and to require its consultants and contractors to understand and adhere to those requirements. Firms should also be aware of FTA requirements for contracts, attached as part of this solicitation, which will be included in the contract with the successful proposer.

The selected firm will be required to sign “Certification Regarding Debarment, Suspension, Other Ineligibility, and Involuntary Exclusion,” as enclosed in this RFP.

**NOTE:** All proposals will be kept confidential throughout the selection process.

Following announcement of an award decision, all submissions in response to this RFP will be considered public records available for public inspection pursuant to State Law. In the event a request is made to produce any proposal, METRO will notify the bidder that it will produce the proposal unless the bidder takes steps it deems necessary to prohibit production. METRO will not undertake to determine whether any proposal or part of any proposal is confidential or otherwise protected from disclosure.

### **INSURANCE and INDEMNIFICATION**

The successful proposer shall agree to defend, indemnify and save METRO harmless from all losses, costs or damages caused by his acts or those of his agents. Before signing the contract, the successful proposer will produce evidence that they have secured Public and Automobile Liability insurance coverage in amounts not less than \$400,000 per person and occurrence for bodily injury, death and property damage, protecting the contractor and METRO, and naming METRO as an additional insured from such claims; Worker's Compensation insurance; and Professional Liability insurance in an amount not less than \$1,000,000 for errors and omissions.

### **RESERVATION OF RIGHTS**

METRO reserves the right to reject any or all proposals, or to waive any informality, should it be deemed in the best interest of METRO to do so.

During the evaluation process, METRO reserves the right to request additional information or clarifications from proposers. Firms are also noticed that METRO, as required by FTA, will conduct a check with the System for Awards Management (SAM) for any disbarment or disqualification from being awarded work that is paid for with federal funds.

METRO reserves the right to retain all packages submitted and to use any ideas in a package regardless of whether that firm is selected. Submission of a package indicates acceptance by the firm of the conditions contained in this request, unless clearly and specifically noted in the package submitted and confirmed in the contract between METRO and the selected firm.

It is the custom of METRO to pay its bills within 30 days following acceptance of the work, and following the receipt of correct invoices for all items covered by the contract. METRO is exempt from the State's sales and use tax as well as all Federal excise taxes.

February 24, 2019

Ellen Sanborn

Finance Director

## **BACKGROUND**

Greater Portland Transit District (“METRO”) is soliciting proposals to select a consultant team to provide creative/design services, including social media support and community outreach, to educate the community about an increase in fares and to encourage use of a new fare payment system.

METRO provides fixed-route and express bus service throughout the Greater Portland region, including the communities of Portland, Westbrook, Falmouth, Freeport, Yarmouth, Brunswick, and Gorham.

In 2018, METRO reached record ridership of almost 2 million. System enhancements in 2018 included the addition of two new bus routes; eleven new buses; partnership with the University of Southern Maine, which provides transportation access for all students, staff, and faculty; installation of more than 15 new bus shelters; rebranding; and a new website with text alert options to improve communications to riders and stakeholders.

In 2019, METRO plans to introduce automatic fare payment options. METRO is currently working with Four Nines Technology, a consultant, to design, procure and implement the automated fare system. Preliminary design includes reusable smart card and mobile ticketing technology, which is a significant change from our current paper ticket system for riders. METRO also plans to increase fare rates.

The Mobile fare payment option is expected to launch in mid-August of 2019, in conjunction with a fare increase. Mobile fare payment is a first step of the automated fare payment system, with continued use of paper fare media. In January of 2020, METRO will implement changes to the structure of fare systems, which may include elements such as fare capping and electronic monthly pass, and eliminate use of paper fare media. This step will also include the addition of smart card technology to the automated system.

## **PROJECT GOALS**

Through the introduction of automated fare payment options METRO is seeking to advance these objectives:

- **Improve and simplify the customer experience in purchasing fare media.**  
Currently, METRO only uses cash and printed tickets, available for purchase at limited outlets. An automated fare system will allow for broader access and easier payment options for accessing transit.
- **Increase transit system use and fare revenue.**  
Modern, electronic fare collection will make it easier to purchase tickets and encourage use of transit.

- **Improve equity in the cost of using transit.**  
METRO seeks to increase equity in the cost for riders with this system. Design options, such as “fare-capping,” would reduce costs for frequent users, along with ensuring transit users with special needs have better access to discounted fare programs.
- **Reduce the use of cash as a form of payment.**  
METRO will still accept cash on buses, but wants to encourage the use of convenient mobile ticketing and smart cards, to reduce the use of cash.
- **Support expansion of institutional pass program.**  
Provide a convenient platform to encourage businesses and organizations to provide transit benefits to their employees.
- **Limit the involvement of bus operator involvement in the fare paying process.**  
Avoid confrontations and allows the driver to focus on safety.

Implementation of a fare increase has been planned for a while, to coincide with the automated fare payment system. METRO last raised fares in 2010.

## **SCOPE OF WORK**

The successful consultant will be asked to work with the Marketing Director to develop and implement a marketing and communications strategy that will achieve, at a minimum, the following goals.

1. Develop a communication plan on new fare payment benefits and options, with strategies to inform and retain current riders while also attracting new customers, including organizations and businesses.
2. Develop a communication plan on fare increases that educates riders about the structure, and focuses on how use of the automated system can mitigate the impact on riders. Some fare pricing options are unique and can be complicated for riders to understand.
3. Create a media plan to introduce both the new automatic fare payment and fare increase, using traditional and non-traditional platforms.
  - a. Note that media placement will be by METRO.
4. Design promotional materials to support marketing and communication strategies.
5. Incorporate messaging and community outreach activities to include minority, low income, senior, and Limited English Proficiency (LEP) populations.

It is expected that the selection of a firm and contract execution will be completed to allow the successful firm to begin work by May 1, 2019.

## **DELIVERABLES**

Within 20 days of contract execution, consultant will work with METRO to develop a Marketing and Communications Plan and Timeline to promote new fare technology options to include:

1. Recommended marketing strategy and tactics aimed at generating awareness and excitement around introduction of new fare technologies.
2. Create advertising content for print, internet, social media, potential outdoor platforms such as bus shelters and bus advertising. METRO is interested in innovative, low cost, but effective tactics to reach people.

These will need to be completed in order to accomplish the following expected public education and marketing timelines:

July – September, 2019. Mobile ticketing option available in late August, along with an increase in fares.

December 2019- February 2020. Smart cards available in mid-January 2020, along with fare restructuring.

## **PROPOSAL REQUIREMENTS**

1. Provide a list of all the individuals and firms (including subcontractors, if any) that will be involved in the provision of services, and the expertise and qualifications of all key team members assigned to the work. Identify the project manager.
2. Describe any prior or present projects that would tend to substantiate your firm's and team members' qualifications to perform this project. Include detailed descriptions and representative samples of prior relevant work on messaging and advertising/branding strategies, product launches, social media marketing strategies, evaluation methodologies, and report outputs prepared by the project team and/or the team members.
3. Describe your firm's understanding of the scope and approach for meeting stated goals and timeline.
4. Provide total pricing for complete scope. Pricing should detail the hourly rate for each staff, number of hours, and extended price. Pricing should not include cost of media placement.

**Ownership of Submitted Materials.** All proposal materials submitted to and accepted by METRO in response to this RFP shall be retained by and become the property of METRO.

## **SELECTION PROCESS AND CRITERIA**

Proposals will be evaluated by a Selection Committee using the following selection criteria, which may include interviews with some or all proposers. The Committee may perform preliminary scoring of proposals and choose to interview the top scoring company or companies, after which a final scoring will be made. Award will be made to the Proposer who best meets the requirements and offers the proposal that METRO determines to be in its best interest. The selected firm will enter into a contract with METRO according to this RFP and firm's proposal.

### **Creative Ability and Approach: 40%**

Demonstrated artistic and innovative expertise, examples of innovative approaches to similar types of projects. Proven ability to manage iterative design process to meet timelines. Proposed design elements and ideas, based on understanding of desired outcomes.

### **Proposal Cost 35%**

Cost for project as described.

### **Qualifications and Experience: 15%**

Experience and qualifications of staff.

### **Understanding of Project: 10%**

Comprehensive proposal that addresses all areas of this RFP, offering clear and understandable information. Understanding of METRO operations and project scope.

**COMPLETE AND RETURN THIS PAGE**

**PROPOSAL**

The UNDERSIGNED hereby declares that he, she, or they are the only person(s), firm, or corporation interested in this proposal as principal; that it is made without any connection with any other person(s), firm, or corporation submitting a bid for the same.

The UNDERSIGNED hereby declares that they have read and understand all conditions as outlined herein, and that the proposal is made in accordance with same.

The UNDERSIGNED hereby declares that any person(s) employed by METRO, Maine, who has direct or indirect personal or financial interest in this proposal, or in any profits which may be derived therefrom has been identified and the interest disclosed by separate attachment. Please include in your disclosure any interest which you know of.

This Proposal acknowledges the receipt of Addenda No.: \_\_\_\_\_

COMPANY NAME:

\_\_\_\_\_

(Individual, Partnership, Corporation, Joint Venture)

AUTHORIZED SIGNATURE:

\_\_\_\_\_ DATE: \_\_\_\_\_

(Officer, Auth. Individual, Owner)

PRINT NAME & TITLE:

\_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

TELEPHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

FEDERAL TAX I.D. NUMBER: \_\_\_\_\_

**NOTE: All proposals must bear the handwritten signature of a duly authorized member or employee of the organization making the proposal.**

**COMPLETE AND RETURN THIS PAGE**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
OTHER INELIGIBILITY, AND INVOLUNTARY EXCLUSION**

The Respondent, \_\_\_\_\_, certifies, by submission of this proposal, that neither it nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or involuntarily excluded from participation in this transaction by any Federal Department or Agency.

The Respondent agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200, while this Request for Proposals (“RFP”) is pending and throughout the period of any contract that may arise from this RFP. The Respondent further agrees that it and its affected subcontractors will provide immediate written notice to Greater Portland Transit District (“METRO”) if at any time the Respondent learns that his/her subcontractor’s certification was erroneous when submitted or has become erroneous because of changed circumstances.

By submitting this proposal and affixing a signature below, the Respondent certifies that the above statement is a material representation of fact upon which reliance is placed by METRO. If it is later determined that the Respondent knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, METRO may terminate this transaction for cause of default.

If the Respondent is unable to certify to any of the statements in this certification, the Respondent shall attach an explanation to this certification.

**The Respondent certifies or affirms the truthfulness and accuracy of the contents of the statement submitted on or with this certification and understands that the provisions of 31 U.S.C. §§ 3801-3812 are applicable thereto.**

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Authorized Official

\_\_\_\_\_  
Company Name



### FTA THIRD PARTY CONTRACTING REQUIREMENTS

- A. Federal Requirements; Changes Thereto.** Contractor shall at all times comply with Federal Transit Administration (“FTA”) Circular 4220.1F, as may be amended from time to time, and all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in any grant agreement between FTA and METRO and any standard terms and conditions attached thereto (“Grant Agreement”), as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract. Anything to the contrary herein notwithstanding, all FTA mandated terms and conditions set forth in FTA Circular 4220.1F, as may be amended from time to time, and the Grant Agreement shall be deemed to control in the event of a conflict with other provisions contained in this contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with METRO requests which would cause METRO to be in violation of any FTA terms and conditions. Contractor agrees to include this contract term, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.
- B. No Federal Government Obligations to Third Parties.** Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Grant Agreement, absent the Federal Government’s express written consent, the Federal Government shall not be subject to any obligations or liabilities to Contractor or any other person or entity that is not a party to the Grant Agreement. Contractor agrees to include this contract term, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.
- C. Conflict of Interest.** By entering into this contract with METRO to perform or provide work, services, or materials, Contractor has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed and/or provided under this contract and that it shall not employ any person or agent having any such interest. In the event that Contractor or its agents, employees, or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to METRO and take action immediately to eliminate the conflict or to withdraw from this contract, as METRO may require.
- D. False or Fraudulent Statements or Claims.**
1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801-3812, and U.S. Department of Transportation (“DOT”) regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to Contractor’s activities in connection with this Project. Contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Grant Agreement or the project for which the contract work is being performed. In addition to other penalties that may apply, Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement,

submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

2. Contractor further acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with this project or any other Federal law, the Federal Government reserves the right to impose on Contractor the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.
3. Contractor agrees to include these contract terms, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.

**E. Access to Records.** Contractor agrees to:

1. Provide to METRO, the FTA Administrator, the U.S. Secretary of Transportation, and the U.S. Comptroller General or their duly authorized representatives access to all records to the extent required by 49 U.S.C. § 5325(g). Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed;
2. Maintain all books, records, accounts, and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract except in the event of litigation or settlement of claims arising from the performance of this contract. In such case, Contractor agrees to maintain same until METRO, the FTA Administrator, the U.S. Secretary of Transportation, and the U.S. Comptroller General or their duly authorized representatives have disposed of all such litigation, appeals, claims, or exceptions related thereto, or until the end of the regular three-year period, whichever is later, pursuant to 49 CFR Part 18.42.
3. Comply with all applicable State of Maine record retention requirements and applicable provisions of the Maine Freedom of Access Law, 1 M.R.S.A. § 401, *et seq.*
4. Include these contract terms, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.

**F. Civil Rights.** Contractor agrees to comply with all applicable civil rights laws and implementing regulations including, but not limited to, the following:

1. Nondiscrimination in Federal Public Transportation Programs. Contractor agrees to comply, and assures that each subcontractor will comply, with the provisions of 49 U.S.C. § 5332, which prohibits discrimination (including discrimination in employment or business opportunity), exclusion from participation in employment or business opportunity, or denial of program benefits in employment or business opportunity on the basis of race, color, creed, national origin, sex, disability, or age. Contractor further agrees to comply with FTA Circular 4702.1, "Title VI

Requirements and Guidelines for Federal Transit Administration Recipients,” as amended, to the extent consistent with applicable Federal laws, regulations, and guidance, and other applicable Federal guidance that may be issued.

2. Nondiscrimination—Title VI of the Civil Rights Act. Contractor agrees to, and assures that each subcontractor will, prohibit discrimination based on race, color, or national origin and comply with (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, (ii) DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of Civil Rights Act,” 49 CFR Part 21, (iii) U.S. Department of Justice (“DOJ”), “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 CFR § 50.03, and (iv) all other applicable Federal guidance that may be issued.
3. Nondiscrimination on the Basis of Sex. Contractor agrees to comply, and assures that each subcontractor will comply, with Federal prohibitions against discrimination on the basis of sex, including (i) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*; (ii) DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25; and (iii) Federal transit law, specifically 49 U.S.C. § 5332.
4. Nondiscrimination on the Basis of Age. Contractor agrees to comply, and assures that each subcontractor will comply, with Federal prohibitions against discrimination on the basis of age, including (i) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, which prohibits discrimination on the basis of age; (ii) U.S. Equal Employment Opportunity Commission (“EEOC”) regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625, which implements the Age Discrimination in Employment Act; (iii) the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds; (iv) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 CFR Part 90, which implements the Age Discrimination Act of 1975, and (v) Federal transit law, specifically 49 U.S.C. § 5332.
5. Nondiscrimination on the Basis of Disability. Contractor agrees to comply, and assures that each subcontractor will comply, with the following Federal laws and regulations against discrimination on the basis of disability: (i) 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; (ii) 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; (iii) 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; (iv) Federal transit law, specifically 49 U.S.C. § 5332, which includes disability as a prohibited basis for discrimination; (v) DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, “Nondiscrimination on the Basis of

Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27, and “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR Part 39; (vi) Joint U.S. Architectural and Transportation Barriers Compliance Board (“ATBCB”) and DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38; (vii) DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35, and “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36; (viii) EEOC regulations, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630; (ix) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, Subpart F; (x) ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194; (xi) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609; and (xii) all other applicable laws and amendments pertaining to access for seniors or individuals with disabilities, and applicable Federal civil rights and nondiscrimination guidance.

6. Equal Employment Opportunity. Contractor agrees to, and assures that each subcontractor will, (i) prohibit discrimination on the basis of race, color, religion, sex, or national origin and comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*; (ii) facilitate compliance with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, “Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity,” by ensuring that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their race, color, religion, national origin, disability, age, sexual origin, gender identity, or status as a parent; and (iii) comply with Federal guidance pertaining to Equal Employment Opportunity laws and regulations, and prohibitions against discrimination on the basis of disability. Contractor further agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor further agrees to comply with any implementing requirements that FTA may issue.
7. Contractor agrees to include these contract terms, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.

**G. Disadvantaged Business Enterprises.** To the extent authorized by applicable Federal law and regulation, Contractor agrees to, and assures that each subcontractor will, facilitate participation by

small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as Disadvantaged Business Enterprises (“DBEs”), as follows:

1. Contractor agrees to comply with (i) Section 1101(b) of SAFTEA-LU, “Moving Ahead for Progress in the 21<sup>st</sup> Century” (MAP-21), 23 U.S.C. § 101; (ii) DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26, and (iii) Federal transit law, specifically 49 U.S.C. § 5332.
2. Contractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor agrees to carry out applicable requirements of 49 CFR Part 26 in the administration of this contract and the award and administration of any subcontract issued pursuant to this contract. Failure by Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as METRO deems appropriate, which may include, but is not limited to withholding monthly progress payments, assessing sanctions, liquidated damages, or disqualifying Contractor from future bidding as non-responsible.
3. Contractor agrees to include these contract terms, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.

**H. Small & Minority Businesses; Women’s Business Enterprises.** Contractor agrees to take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible. Affirmative steps include: (i) placing qualified small & minority businesses and women’s business enterprises (“SMBWBEs”) on solicitation lists; (ii) assuring that SMBWBEs are solicited whenever they are potential sources; (iii) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by SMBWBEs; (iv) establishing delivery schedules, where requirements permit, that encourage participation by SMBWBEs; and (v) using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce. Contractor agrees to include this contract term, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.

**I. Debarment and Suspension.** This contract is a covered transaction for purposes of 49 CFR Part 29. Accordingly:

1. Contractor agrees to review, and assures that all subcontractors will review, the U.S. General Services Administration (“GSA”) “System for Award Management,” <https://www.sam.gov>, if required by DOT regulations, 2 CFR Part 1200, and the Excluded Parties Listing System at <http://epls.arnet.gov> before entering into any contracts. Contractor further agrees to and assures that all subcontractors will enter into no arrangement to participate in the development or implementation of this project with any party that is debarred or suspended, pursuant to DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200; U.S. Office of Management and Budget (“OMB”), “Guidelines to Agencies on Governmentwide Debarment and

Suspension (Nonprocurement),” 2 CFR Part 180, including any amendments thereto; Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note; and other applicable Federal laws, regulations, or guidance regarding participation with debarred or suspended subcontractors. Contractor agrees to comply with said requirements throughout the period of this contract.

2. Contractor certifies that neither it nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or involuntarily excluded from participation in this transaction by any Federal Department or Agency.
3. Contractor certifies that the above statement is a material representation of fact upon which reliance is placed by METRO. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, METRO may terminate this transaction for cause of default.
4. Contractor agrees to include these contract terms, as modified to apply to each subcontractor, in each subcontract issued pursuant to this contract.

**J. Fair Labor Standards.** Contractor agrees to comply, and assures that all subcontractors will comply, with the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, to the extent that the FLSA applies to employees performing project work involving commerce, and as the Federal Government otherwise determines applicable.

**K. Employee Protections—Wage and Hour Requirements.** Contractor agrees to comply, and assures that all subcontractors will comply, with all applicable Federal laws and regulations providing wage and hour protections for nonconstruction employees, including (i) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. Department of Labor (“DOL”) regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to Contract Work Hours and Safety Standards Act,” 29 CFR Part 5. Accordingly, Contractor shall comply with the following contract terms and insert said terms in full in any contract or subcontract, if the contract or subcontract may require or involve the employment of laborers or mechanics and if it is not contemplated that the contract or subcontract will be a contract for supplies, materials, or articles ordinarily available in the open market or any other type of contract exempt from the Contract Work Hours and Safety Standards Act, pursuant to 40 U.S.C. § 3701(b):

1. Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability For Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding For Unpaid Wages And Liquidated Damages. METRO shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**L. Contract Termination Requirements.**

**Opportunity to Cure.** METRO in its sole discretion may, in the case of a termination for breach or default, allow Contractor 30 days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to METRO's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within 10 days after receipt by Contractor of written notice from METRO setting forth the nature of said breach or default, METRO shall have the right to terminate the contract without any further obligation to Vendor. Any such termination for default shall not in any way operate to preclude METRO from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**Termination for Convenience.** METRO shall have the right to terminate this Agreement at any time for its convenience, in whole or from time to time in part, upon prior written Notice to **CONTRACTOR**. If Agreement is terminated by the **METRO** for convenience, the **METRO** shall pay the **CONTRACTOR** for any unpaid, unrecovered, or unrecoverable out-of-pocket costs for supplies, materials and/or services provided or amounts expended or incurred in reliance on this Agreement prior to the effective date of such notice.

After receipt of a notice of termination, and except as otherwise directed by the GM, Contractor shall:

- (i) stop work under the contract on the date and to the extent specified in the Notice of Termination;
- (ii) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- (iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (iv) assign METRO, in the manner at the times, and to the extent directed by the GM, all of the rights, title, and interest of Contractor under the orders and subcontracts so terminated, in which case METRO shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the GM, to the extent he may require which approval or ratification shall be final for all the purposes of this clause;
- (vi) transfer title to METRO and deliver in the manner at the times and to the extent if any, directed by the GM the work in process, completed work, supplies, and other material produced as part of, or acquired in connection with the performance of the work terminated, and the completed or partially completed plans, information and other property which, if the contract had been completed, would have been required to be furnished to METRO;
- vii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and take such action as may be necessary, or as the GM may direct, for the protection or preservation of the property related to this contract, which is in the possession of Contractor and in which METRO has or may acquire an interest.

Settlement of claims under this Termination for Convenience clause shall be in accordance with paragraphs (c) through (m) of the clause contained in the Federal Acquisition Regulation (FAR) Part 52, Subpart 52.249-2, except that wherever the word "Government" or "Contracting Officer" appears it shall be deleted and "METRO" shall be substituted in lieu thereof.

**Dispute Resolution.** Any dispute among the Parties arising out of or relating to this contract shall be resolved in accordance with this Section.

1. **Negotiation.** The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy, or claim arising out of or relating to this contract ("Dispute") within 30 days after the date that a Party has given written notice of such Dispute to the other Party.



2. Arbitration. If the Dispute has not been resolved within 30 days, any Party may serve written notice on the other Party of a request for non-binding mediation. The mediation shall be conducted in Maine by a mediator mutually agreeable to the Parties, shall not exceed one full day or two half days in length, and shall be completed within 90 days from the date of receipt of notice of a request for mediation by the last Party to receive notice. In the event that the Parties are unable to agree on a mediator within 30 days, or to resolve the dispute through mediation within 90 days, the Parties reserve the right to file a civil action in a court of competent jurisdiction located in Cumberland County, Maine. This dispute resolution mechanism shall be binding upon the successors, assigns, foreclosing mortgagee, and any trustee or receiver of the Parties.
3. Performance During Dispute. Unless otherwise directed by METRO, Contractor shall continue performance under this contract while matters in dispute are being resolved.
4. Claims for Damages. Should either Party suffer injury or damage to person or property because of any act or omission of the Party or of any of his employees, agents, or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other Party within a reasonable time after the first observance of such injury of damage.
5. Rights and Remedies. The duties and obligations imposed by this contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by METRO or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

FTA Vested Interest. The Parties acknowledge that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the project, and has the right to participate in any dispute resolution as it may choose to do.