

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AWARDING A SOLE)	RESOLUTION NO. 04-3437
SOURCE PERSONAL SERVICES AGREEMENT)	
CONTRACT NO. 925542 TO KEITH LAWTON)	Introduced by Michael Jordan with
FOR MODEL ANALYSIS, TECHNICAL)	concurrence of Council President David
ASSISTANCE AND ADVICE IN THE)	Bragdon
CALIBRATION VALIDATION AND)	
IMPLEMENTATION OF TRANSIMS AT)	
METRO)	

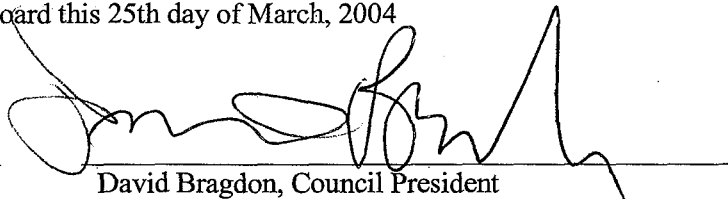
WHEREAS, the Transportation Analysis and SIMulation System (TRANSIMS) transportation model is a major research and development element for the Travel Model Improvement Project (TMIP); and

WHEREAS the Federal Highway Administration (FHWA) contracted with Metro in 1997 to be the first full deployment site for the model; and

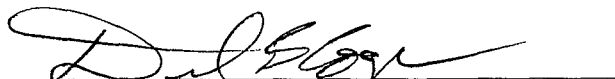
WHEREAS, Keith Lawton has led the project from the beginning. He has been involved with the FHWA technical team and their consultants. From that relationship he has been able to advise the Travel Forecasting staff on the very technical details. He has a unique expertise that no one else can duplicate; now therefore

BE IT RESOLVED that the Metro Contract Review Board approves the sole source agreement with Keith Lawton.

ADOPTED by the Metro Contract Review Board this 25th day of March, 2004


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



STAFF REPORT

IN CONSIDERATION OF [RESOLUTION NO. 04-3437](#), FOR THE PURPOSE OF [AWARDING A SOLE SOURCE PERSONAL SERVICE AGREEMENT CONTRACT NO. 925542 TO KEITH LAWTON FOR MODEL ANALYSIS, TECHNICAL ASSISTANCE AND ADVICE IN THE CALIBRATION, VALIDATION AND IMPLEMENTATION OF TRANSIMS AT METRO](#)

Date: March 8, 2004

Prepared by Andrew Cotugno

BACKGROUND

The TRANSIMS (TRansportation ANalysis and SIMulation System) transportation model is a major research and development element for the Travel Model Improvement Project (TMIP) being supported by the USDOT, FTA, FHWA and the EPA. TRANSIMS was developed by the Los Alamos National Laboratory (LANL).

Portland was chosen as the site for the first full deployment of this model in 1997. The project is very technical in nature, and includes new conceptual approaches that are in every way superior to the traditional trip based models that have their origin in 1960's technology.

The project is 12 to 15 months from completion with many technical issues still to be resolved.

Nature of the Contract:

This personal services agreement is for model analysis, technical assistance and technical leadership, and technical advice in the final phases of the project to implement, calibrate and validate TRANSIMS for the Portland-Vancouver region.

Reason for Sole Source:

T. Keith Lawton has been involved in this project since its inception. Besides providing technical leadership to the Metro staff involved in the details of this project, he has been closely involved with LANL, reviewing and advising on their work. He is a member of the team that provides continuing technical leadership as the project emerges. This team includes the FHWA technical staff, representatives from their two consultants, AECOM and PB Consult, Dr. Richard Beckman late of LANL, and IBM consulting, which has supplied the interface to the LANL model.

Mr. Lawton has an intimate familiarity with technical aspects of this project that cannot be replicated easily. He is highly valued by all the members of the technical leadership group.

The project sponsor, FHWA has requested that he be retained to help lead the project in its final phases.

ANALYSIS/INFORMATION

1. **Known Opposition** None

2. **Legal Antecedents** None
3. **Anticipated Effects** Metro will be able to complete the TranSims project within the contract completion date.
4. **Budget Impacts** Salary savings from the TranSims grant will be used to cover the contract costs. Completion of the contract is contingent upon Metro's continued receipt of the FHWA incremental funding.

RECOMMENDED ACTION

Approve Resolution Number No. 04-3437 to enter into an agreement with Keith Lawton.

Exhibit A

Scope of Work for Model Analysis, Technical Assistance, and Advice in the Calibration, Validation and Implementation of TRANSIMS at Metro

Keith Lawton Consulting

I. Purpose

The purpose of *Model Analysis, Technical Assistance, and Advice in the Calibration, Validation and Implementation of TRANSIMS at Metro* is to provide Metro and the FHWA with the technical assistance, advice and model analysis for specific elements of the implementation of TRANSIMS at Metro, and to provide coordination with FHWA's Consultants (see below) in tasks allotted to them.

II. Scope of Work

Metro has contracted with FHWA to supply staff, transportation modeling skills and its technical expertise in a research project to carry out the first implementation of TRANSIMS, a model developed by the Los Alamos National Laboratory (LANL). This work is being conducted in conjunction with FHWA's Consultants (AECOM and PBConsult), the model interface developer (IBM Consulting), and Dr Richard Beckman.

The tasks and task descriptions herein have been coordinated with those contracted for by both the FHWA Consultants and in the Metro-FHWA agreement.

The Consultant will represent Metro in project outreach, attending meetings of the TRANSIMS Working Group (TWG), a national oversight committee and with the Steering Committee of the federal Transportation Modeling Improvement Program (TMIP) as requested. The Consultant will also attend professional and technical meetings, such as the Transportation Research Board (TRB) for both discussion and presentations as requested.

The Consultant will provide a monthly project report to Metro for transmission to the FHWA.

The proposed schedule and cost estimate associated with the scope of work is attached. The schedule assumes the project will be completed by February 2005.

The task descriptions presented below provide an overview of the activities that will be performed by Metro and FHWA's Consultant team, and the services and products of *the Consultant*.

Track 1 – Network Simulation

Task 1.1 Software Testing

The microsimulator has been losing 30 percent of the trips assigned to it; METRO will evaluate the off-plan problems and test a variety of stabilization methods designed to make the traffic assignment results more realistic. *The Consultant will advise on this investigation and participate in strategic decisions, such as the appropriate level of network granularity that will yield a practical solution.*

Products: *Memoranda detailing the analysis in support of this task as required.*

Task 1.5 Stabilization

Very little work has been done on the specific details of the stabilization process. Metro has done some preliminary tests and the Consultant has proposed an initial strategy. This task will formalize the feedback strategy and execute the sequence of model runs required within TRANSIMS to implement the procedure. The Metro will help design the procedure, and execute and evaluate the procedure with advice from the Consultant in designing the feedback strategy and developing the methods used to update the activity patterns. *The Consultant will advise on this investigation and participate in strategic decisions, leading to a successful stabilization.*

Products: Analytical memoranda detailing issues and solutions as required.

Task 1.6 Sensitivity Tests

In order to have any confidence that the network simulation approach is appropriate as a substitute for equilibrium assignment procedures, a series of sensitivity tests are critical. These tests will demonstrate the models responsiveness to both small and large changes in the input assumptions. If the impacts on the results are reasonable, the Consultant will have a reasonable basis for recommending the process to other urban areas. The FHWA Consultant will be primarily responsible for developing the test plan and reviewing the results of the model runs. Metro will be responsible for conducting the runs. *The Consultant will advise in development of these tests.*

Products: Analytical memoranda detailing issues and solutions as required.

Track 2 – GEN2 Model

FHWA accepted the GEN2 Design and requested a detailed work plan for its implementation. Completing these tasks will require extending the period of performance from October 2003 to April 2005.

Task 2.2 Model Development

The major efforts in estimating, calibrating, and validating the GEN2 modeling procedures within the TRANSIMS architecture will be performed under this task. The GEN2 design specifies adapting the Metro location choice and mode choice procedures as the starting point for activity generation within TRANSIMS. The FHWA Consultant and LANL staff will be extensively involved in designing the model algorithms, developing mode preference software tools, evaluating the results, and documenting the procedures. It is envisioned that the FHWA Consultant team will actively participate and provide technical direction and assistance to Metro as part of this task. Metro will participate in the development of the procedures and will implement them within the Portland model set. *The Consultant will play a significant role in this task, being involved in the detailed design, and will participate in strategic decisions, such as the model structure to be used.*

Products: Reports and technical memoranda as required.

Task 2.3 Year 2000 Validation

Once the GEN2 model is developed, it is critical that the process be validated against observed behavior in response to real world changes in the transportation system. A

year 2000 validation will test the model's responsiveness to a major new light rail line in the Western suburbs of the Portland region. Metro will be responsible for developing the new networks, updating employment and population, and running the models for this task. *The Consultant will advise on, and provide analytical support for, this task.*

Products: Reports and technical memoranda as required.

Task 2.4 Long Range Plan Test

In addition to validating the model against year 2000 conditions, a logical process for applying the model to future conditions must be established before the tool can be recommended for general use. Since the Microsimulator will not overload roadways the way traditional assignment software does, the whole approach to forecasts needs to be redefined. This work plan proposes to implement the Portland region's long-range plan as a series of five-year forecasts. This will enable the TRANSIMS model to adjust to changes in demographics and network conditions incrementally rather than as one massive change. The model will have a chance to stabilize at each intermediate year before attempting to absorb more development. It will also provide the analyst with a much better sense of the types of regional dynamics that are likely to influence growth, and therefore provide an opportunity to refine or fine-tune the growth estimates or network facilities during the forecasting process. Throughout this process, the FHWA Consultant will be providing advice, monitoring and documenting progress, evaluating results, and assessing the model's performance. Metro will be responsible for developing the new networks, updating employment and population, and running the models for this task. *The Consultant will advise on this task, provide analytical support, and participate in strategic decisions.*

Products: Reports and technical memoranda as required.

Task 2.5 Documentation

The FHWA Consultant will have primary responsibility for documenting the Track 2 process and the GEN2 model. This includes a record of the step-by-step activities undertaken by Metro to implement the procedures, documentation of the process that could be used by other agencies interested in implementing similar procedures, and a report assessing the overall results and providing Consultant recommendations. Metro will cooperate with the Consultant in the preparation of the documentation and will provide other assistance as needed. *The Consultant will provide assistance with this task as requested.*

Products: Report elements and technical memoranda as required.

Track 3 – Strategic Vision

A number of strategic topics have been identified and considered. Some research has been conducted on a few of the topics. Most of this work will be done by the FHWA Consultants and requires the single-user version of TRANSIMS installed and operational at the FHWA Consultant offices. Two topics have been identified that might best be implemented by IBM and/or Virginia Tech. These tasks are identified. Metro will assist as needed.

Task 3.4 Document Findings

The FHWA Consultant will prepare a report documenting the Track 3 findings. The document will include an evaluation of the potential impacts of the findings on the Portland case study. It will also provide recommendations about what course of action that should be taken, if any. Metro will provide comments and other assistance as needed. *The Consultant will review and comment on this documentation.*

Products: Review mark-ups and review memoranda as required.

4. Technical Working Group

The original scope of work called for the organization of a peer panel to review finding and help with the dissemination of information. The Technical Working Group was organized and one meeting was held in June of 2002. Four additional meetings are planned during the period of performance covered by this scope of work. Two of these are completed.

Task 4.3 Calibration/Validation Results

This meeting will focus on the results of the GEN2 calibration and the year 2000 validation. Metro and the FHWA Consultant team will provide the technical presentations and document the discussions. *The Consultant will assist and advise with this task.*

Products: Technical memoranda and presentation materials as required.

Task 4.4 Application Results

This meeting will focus on the application of the GEN2 model to the Metro long-range plan. Metro and the FHWA Consultants will provide the technical presentations and document the discussions. *The Consultant will assist and advise with this task.*

Products: Technical memoranda and presentation materials as required.

5. Outreach

The original scope of work called for outreach activities at major industry meetings such as TRB. This scope of work includes the TRB meetings in 2003, 2004, and 2005. It also includes the Planning Applications Conference and support for outreach to the industry through websites and report distribution.

Task 5.5 TRB Presentations (2005)

METRO, *the Consultant* and the FHWA Consultant will prepare and present the results of the Track 2 efforts in developing and applying the GEN2 model during sessions at the 2005 TRB Annual Meeting in Washington D.C.

Products: Technical memoranda and presentation materials as required.

6. Project Reports

Documenting the findings of the study and keeping FHWA informed about project status are the primary objectives of this task. The FHWA Consultant team will lead all of these efforts. Metro will provide assistance as needed. *The Consultant will provide assistance as requested.*

Task 6.2 Progress Reports

Metro will prepare monthly progress reports to support each invoice. *The Consultant will prepare these reports for Metro after March 1st 2004.*

Products: Monthly progress reports.

Task 6.3 Management Teleconferences

Metro, *the Consultant* and the FHWA Consultant will organize and participate in regular teleconferences with FHWA to discussion progress. Minutes will be generated and distributed for each teleconference by the FHWA Consultant. The cost estimate assumes two teleconferences each month.

Products: Teleconference notes as required.

Task 6.4 Draft Final Report

In addition to documenting each major task and the model results, the Consultant will prepare an overall summary report for the project that highlights key findings and provides recommendations and advise for future users of the TRANSIMS software. METRO *and the Consultant* will support the FHWA Consultant in the preparation of the Draft Final Report. This task will prepare the draft final report for review and comments by FHWA and others.

Products: Document review mark-ups and memoranda as required.

Task 6.5 Review and Comment

FHWA will be the primary reviewer of the draft final report. A number of the technical staff from the Metro will provide their comments to FHWA for their consideration. *The Consultant will provide review and comment on the final report.*

Products: Document review mark-ups and memoranda as required.

**Budget Summary for Model Analysis, Technical Assistance, and Advice in the
Calibration, Validation and Implementation of TRANSIMS at Metro**

Keith Lawton Consulting

ESTIMATE of Hours and Costs		T. Keith Lawton		Schedule Estimate	
Rate		\$125	per Hour		
TASK	Comment	Hours	Cost Dollars	From	To
<i>Track 1: Network Simulation</i>					
1.1 Software Testing	In Progress	8	1,000.00	Mar-04	May-04
1.5 Stabilization	Not Started	16	2,000.00	Mar-04	Apr-04
1.6 Sensitivity Tests	Not Started	8	1,000.00	May-04	Jun-04
Subtotal: Track 1			4,000.00		
<i>Track 2: GEN 2 Model Development</i>					
2.2 Model Development	In Progress	160	20,000.00	Mar-04	Jun-04
2.3 Year 2000 Validation	Not Started	80	10,000.00	Jul-04	Oct-04
2.4 Long Range Plan Test	Not Started	80	10,000.00	Nov-04	Feb-05
2.5 Documentation	In Progress	24	3,000.00	Mar-04	Feb-05
Subtotal: Track 2			43,000.00		
<i>Track 3: Strategic Vision</i>					
3.4 Document Findings	Not Started	10	1,250.00	Mar-04	Feb-05
Subtotal: Track 3			1,250.00		
<i>Technical Working Group Review</i>					
4.3 Calibration/Validation Results	Not Done	24	3,000.00	Sep-04	Sep-04
4.4 Application Results	Not Done	24	<u>3,000.00</u>	Feb-05	Feb-05
Subtotal: TWG Reviews			6,000.00		
<i>Outreach</i>					
5.5 TRB presentations 2005	Not Done	24	3,000.00	Dec-04	Mar-05
Subtotal: Outreach			3,000.00		
<i>Project Reports</i>					
6.2 Progress Reports	Ongoing	48	6,000.00	Mar-04	Mar-05
6.3 Management Teleconferences	Ongoing	36	4,500.00	Mar-04	Mar-05
6.4 Draft Final Report	Not Started	40	5,000.00	Apr-04	Feb-05
6.5 Review and Comment	Not Started	40	5,000.00	Mar-05	Mar-05
Subtotal: Reports			20,500.00		
Total Hourly	Hours	622	77,750.00		
Travel -- Assume 6 trips	6	\$1,500	9,000.00		
Total over 13 months			86,750.00		

PERSONAL/PROFESSIONAL SERVICES CONTRACT

Metro Contract No. 925542

This Contract is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, hereafter called Metro, and Keith Lawton Consulting, hereafter called Contractor. Metro's Contract Administrator for this Contract is Dick Walker, telephone (503) 797-1765, or such other person as Metro may designate in writing to Contractor.

1. Effective Date and Duration. This Contract shall become effective on the date this Contract has been signed by every party hereto. Unless terminated or extended, this Contract shall expire when Metro accepts Contractor's performance, or on **June 30, 2005**, whichever date occurs first. Expiration shall not extinguish or prejudice Metro's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.

2. Statement of Work. The statement of work (the "Work"), including the delivery schedule for such Work, is contained in Exhibit A attached and incorporated by reference into this Contract. Contractor agrees to perform the Work in accordance with the terms and conditions of this Contract.

3. Consideration.

- a. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is **Eighty-Six Thousand Seven Hundred Fifty Dollars and 00/100ths (\$86,750.00)**.
- b. Interim payments to Contractor shall be made only in accordance with the schedule and requirements in Exhibit A.

4. Contract Documents. This Contract consists of the following documents, which are listed, in descending order of precedence: this Contract less all exhibits, attached Exhibits A, B, C and D. All attached Exhibits are hereby incorporated by reference.

5. Independent Contractor; Responsibility for Taxes and Withholding.

- a. Contractor shall perform all required Work as an independent contractor. Although Metro reserves the right (i) to determine the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, Metro cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- b. If Contractor is currently performing work for Metro or the federal government, Contractor by signature to this Contract declares and certifies that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor's employing agency (Metro or state or federal) would prohibit Contractor's Work under this Contract. Contractor is not an "officer," "employee," or "agent" of the Metro, as those terms are used in ORS 30.265.
- c. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to

backup withholding, Metro will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

6. Subcontracts and Assignment; Successors and Assigns.

- a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract, except by amendment to this Contract. In addition to any other provisions Metro may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by Sections 6, 10, 11, 15 and 17 of this Contract 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 Contract.
- b. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

7. No Third Party Beneficiaries. Metro and Contractor are the only parties to this Contract and, except for the Federal Highway Administration are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. The Federal Highway Administration is hereby declared to be such a beneficiary, and may enforce the terms of this Contract.

8. Funds Available and Authorized; Payments.

- a. Metro has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract. Contractor understands and agrees that payments are dependent on Metro reimbursement from the Federal Highway Administration, specifically, continued receipt of FHWA incremental funding for the project.
- b. While interim payments will be made in accordance with Exhibit A, payments are contingent upon delivery of the specified work products completed in accordance with the terms of this contract, including the statement of Work in Exhibit A.

9. Representations and Warranties.

- a. **Contractor's Representations and Warranties.** Contractor represents to Metro that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered shall be a valid and binding obligation of Contractor, enforceable in accordance with its terms, (3) the Work under this Contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of that profession under similar conditions and circumstances, (4) Contractor shall, at all times during the term of this Contract be duly licensed to perform the Work, and if there is no licensing requirement for the profession or work, be duly qualified and professionally competent, (5) all computer hardware and software delivered under this Contract will, individually and in combination, correctly process, sequence, and calculate all date and date related data for all dates prior to, through and after January 1, 2000, and (6) any software products delivered under this Contract that process date or date related data shall recognize, store and transmit date data in a format which explicitly and unambiguously specifies the correct century.

- b. Contractor's Limitation of Liability.** Contractor's liability with respect to items (5) and (6) of 9a. above shall not exceed: (1) twice the total contract amount (including any amendments) or (2) \$100,000, whichever is greater.
- c. Representations and Warranties Cumulative.** The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations and warranties provided.

10. Ownership of Work Product.

- a.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of Metro. Metro and Contractor intend that such Work Product be deemed "work made for hire" of which Metro shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to Metro all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as Metro may reasonably request in order to fully vest such rights in Metro. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- b.** In the event Metro alters the work products in any manner, or uses them for a purpose or project other than that specifically identified and intended by this Contract without written verification or adaptation by the Contractor as appropriate, such alteration or use will be at Metro's sole risk, and Contractor shall be released, indemnified and held harmless by Metro, to the extent permitted by applicable Oregon law, including, but not limited to constitutional debt limitation provisions and the Oregon Tort Claims Act.
- c.** Contractor, despite other conditions of this provision, shall have the right to utilize the work product on its brochures or other literature that it may utilize for its sales and, in addition, unless specifically otherwise exempted, the Contractor may use standard line drawings, specifications and calculations on other, unrelated projects.

11. Indemnity.

- a. Claims for Other than Professional Liability.** Contractor shall defend, save and hold harmless Metro, its elected officials, officers, agents and employees, from all claims, suits or actions of whatsoever nature, including intentional acts resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this agreement.
- b. Claims for Professional Liability.** Contractor shall defend, save and hold harmless Metro, its elected officials, officers, agents and employees from all claims, suits or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and subcontractors, agents or employees in performance of professional services under this agreement.
- c. Metro's Actions.** This section does not include indemnification by Contractor of the Metro for Metro's activities, whether related to the contract or otherwise.

12. Insurance. Contractor shall provide insurance as indicated on Exhibit B, attached hereto and by this reference made a part hereof.

13. Termination.

- a. Parties' Right to Terminate for Convenience.** This Contract may be terminated at any time by mutual written consent of the parties.
- b. Metro's Right to Terminate for Convenience.** Metro may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days notice to Contractor.
- c. Metro's Right to Terminate for Cause.** Metro may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as Metro may establish in such notice, upon the occurrence of any of the following events:
 - (i) Metro fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work;
 - (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited or Metro is prohibited from paying for such Work from the planned funding source;
 - (iii) Contractor no longer holds any license or certificate that is required to perform the Work; or
 - (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of Metro's notice, or such longer period as Metro may specify in such notice.
- d. Contractor's Right to Terminate for Cause.**
 - (i) If Metro fails to pay Contractor pursuant to the terms of this Contract, Contractor may terminate this Contract by giving notice to Metro, and if Metro fails to cure within 15 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice. Metro shall pay Contractor for all work performed in accordance with the terms of the Contract prior to termination date, if Contractor is not otherwise in default.
 - (ii) Contractor may terminate this Contract, for reasons other than nonpayment, if Metro commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Contractor's performance under this Contract, and such breach, default or failure is not cured within 10 business days after delivery of Contractor's notice, or such longer period as Contractor may specify in such notice.
- e. Remedies.**
 - (i) In the event of termination pursuant to Sections 13.a, 13.b, 13.c (i), 13.c (ii) or 13.d, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by Metro, less previous amounts paid and any claim(s) which State has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to Metro upon demand.
 - (ii) In the event of termination pursuant to Section 13.c (iii) or 13.c (iv), Metro shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Section 13.c (iii) or 13.c (iv), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 13.b.

- f. Contractor's Tender Upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Metro expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to Metro all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon Metro's request, Contractor shall surrender to anyone Metro designates, all documents, research or objects or other tangible things needed to complete the Work.

14. Limitation of Liabilities. EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTIONS 9(a), 13(d)(ii), or 13(e)(ii), NEITHER PARTY SHALL BE LIABLE FOR (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES UNDER THE CONTRACT OR (ii) ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS CONTRACT IN ACCORDANCE WITH ITS TERMS.

15. Records Maintenance; Access. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Metro, the Oregon Department of Transportation and the Oregon Secretary of State's Office, and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

16. Compliance with Applicable Law. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Metro's performance under this Contract is conditioned upon Contractor's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which are incorporated by reference herein.

17. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform the Work under this Contract in the State of Oregon prior to entering into this Contract.

18. Force Majeure. Neither Metro nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond the reasonable control of Metro or Contractor, respectively. Contractor shall, however, make all reasonable efforts to

remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

19. Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 1, 9, 10, 11, 13, 14, 15, 19 and 26.

20. Time is of the Essence. Contractor agrees that time is of the essence under this Contract.

21. Notice. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Metro at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 21. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Metro, such facsimile transmission must be confirmed by telephone notice to Metro's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

22. Severability. The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

23. Counterparts. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

24. Disclosure of Social Security Number. Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax ID number. This number is requested pursuant to ORS 305.385, OAR 122-80-410(3) and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

25. Governing Law; Venue; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Metro (and/or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of the County for the State of Oregon where the project is located; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

26. Merger Clause; Waiver. This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Metro to enforce any provision of this Contract shall not constitute a waiver by Metro of that or any other provision.

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

CONTRACTOR DATA AND CERTIFICATION

Name (tax filing): Keith Lawton Consulting

Address: 20990 NE Kings Grade, Newberg, OR 97132

Telephone: 503 538-6509 **Facsimile:** 503 537-7854 **Contact:** Keith Lawton

Citizenship, if applicable: Non-resident alien ☐ Yes ☒ No

Business Designation (check one):

☐ Corporation ☐ Partnership ☐ Limited Partnership ☐ Limited Liability Company ☐ Limited Liability Partnership ☒ Sole Proprietorship ☐ Other

Federal Tax ID#: ____ **or SSN#:** [REDACTED]

Above payment information must be provided prior to Contract approval. This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer identification submitted. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to 31 percent backup withholding.

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws, including those in OAR 150-305.385(6)-(B). For purposes of this certificate, 'Oregon tax laws' means the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue

(Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan Transit District Self Employment Tax); (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the above Contractor data is true and accurate.

CONTRACTOR

By: _____

Title _____

Date _____

METRO

By: _____

Title _____

Date _____

EXHIBIT B

INSURANCE

During the term of this Contract, Contractor shall maintain in force at its own expense, each insurance noted below:

1. Required by Metro of contractors with one or more workers, as defined by ORS 656.027.

Workers' Compensation All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

2. Required by Metro ☐ Not required by Metro.

Professional Liability insurance with a combined single limit, or the equivalent, of not less than ☐ \$200,000, ☐ \$500,000, ☒ \$1,000,000, or ☐ \$2,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

3. Required by Metro ☐ Not required by Metro.

General Liability insurance with a combined single limit, or the equivalent, of not less than ☐ \$200,000, ☐ \$500,000, ☒ \$1,000,000, or ☐ \$2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. It shall provide the Local Government (Metro) and its elected officials, the Local Government Metro (Metro) and its officers and employees are Additional Insureds but only with respect to the Contractor's services to be provided under this Contract.

4. Required by Metro ☐ Not required by Metro.

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than ☐ Oregon Financial Responsibility Law (ORS 806.060), ☐ \$200,000, \$500,000, or ☐ \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. It shall provide that Metro, its elected officials, and its officers and employees are Additional Insureds but only with respect to the Contractor's services to be provided under this Contract.

5. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Contractor or its insurer(s) to Metro.

6. Certificates of insurance. As evidence of the insurance coverage required by this Contract, the Contractor shall furnish acceptable insurance certificates to Metro prior to commencing the work. The certificate will specify "**Metro its officers and employees** " and "**The State of Oregon, The Transportation Commission and its members, and the Department of Transportation, its officers and employees**" as Additional Insureds for Automobile and General Liability. It need not reference a specific contract name or number. Insuring companies or entities are subject to Metro acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the Metro. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

EXHIBIT C

CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

(This does not apply if Contractor is a regular corporation. However, Contractor must sign if a professional corporation or any other business entity.)

A. CONTRACTOR IS INDEPENDENT CONTRACTOR.

Contractor certifies he/she meets the following standards:

1. I am registered under ORS chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. I will furnish the tools or equipment necessary for the Contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. **(Please check four or more of the following:)**
 - ☒ A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
 - ☒ B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership;
 - ☐ C. Telephone listing is used for the business that is separate from the personal residence listing .
 - ☒ D. Labor or services are performed only pursuant to written Contracts.
 - ☒ E. Labor or services are performed for two or more different persons within a period of one year.
 - ☒ F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature _____ Date _____

(Agency completes B below when Contractor completes Section A above.)

B. METRO APPROVAL.

ORS. 670.600. Independent Contractor standards. As used in various provisions of ORS chapters 316, 656, 657 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent Contractor" if the standards of this section are met. Metro certifies the contracted Services meet the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. The Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. The Contractor furnishes the tools or equipment necessary for the Contracted labor or services.
4. The Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of a periodic retainer.

Metro Signature _____ Date _____

(Metro's certification is solely for the State's benefit and internal use.)

EXHIBIT D

Federal Provisions

Metro

I. CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this contract that to the best of its knowledge and belief, it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS PRIMARY COVERED TRANSACTIONS

1. By signing this contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he

or she cannot provide the certification set out below. This explanation will be considered in connection with the Oregon Department of Transportation determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when Metro determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or Metro may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to Metro to whom this proposal is submitted if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact Metro's Contracts Section (503)797-1590 to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by Metro entering into this transaction.
7. The Contractor further agrees by submitting this proposal that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by Metro entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered

transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or Metro, Metro may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or Metro with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by Metro with which this transaction originated.
6. The prospective lower tier participant further agree by submitting this contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification require by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or Metro with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, Metro shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the contract, any professional or technical personnel who are or have been at any time during the period of this contract, in the employ of Metro, except regularly retired employees, without written consent of the public employer of such person.

1. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Metro shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract. Contractor, with regard to the work performed after award and prior to completion of the contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contract covers a program set forth in Appendix B of the Regulations.
2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. 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 agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
 - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.

4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Metro or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the contract, Metro shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Metro or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Metro may, at its option, enter into such litigation to protect the interests of Metro, and, in addition, Contractor may request Metro to enter into such litigation to protect the interests of the State of Oregon.

VI. LOBBYING

The Contractor certifies, by signing this agreement 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 any Federal 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 influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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 Section 1352, Title 31, U. S. Code. 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.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.