

REQUEST FOR PROPOSALS (RFP) 2023109

THIRD PARTY ADMINISTRATOR SERVICES

Date Issued: May 5, 2023

Proposals Due: **June 2, 2023, 2:00 PM CT**

FACILITATOR:

Denise Richardson

Denise.Richardson@nashville.gov

DTO Davidson Transit Organization



WeGotransit.com | 615-862-5950
A service of Nashville MTA

REQUEST FOR PROPOSALS

Main Office
430 Myatt Drive
Nashville, TN 37115

**PROPOSALS MUST BE RECEIVED
PRIOR TO 2:00 PM CT.
June 2, 2023
PROPOSAL NUMBER
2023109**

INSTRUCTIONS:

1. SUBMIT (1) ORIGINAL, AND (1) ELECTRONIC COPIES OF YOUR PROPOSAL.
2. RETURN THIS PAGE SIGNED TO RECEIVE ANY ADDENDA.
3. ALL PROPOSALS ARE TO BE IDENTIFIED WITH RFP#, RFP NAME, AND RETURNED IN A SEALED ENVELOPE OR PACKAGE.
4. DURING THE RFP PROCESS ALL COMMUNICATION MUST BE DIRECTED TO PROCUREMENT DEPARTMENT.

Nashville Metropolitan Transit Authority (Nashville MTA) d/b/a WeGo Public Transit and Davidson Transit Organization (DTO), (hereafter may be referred to as the “Agencies” or the “Agency”) are soliciting proposals from firms that are direct writing, third party administrator, claims-paying entities to serve as third-party administrator (TPA) to manage all claims incurred through workers’ comp for employees and third-party accident and liability claims. Proposals from insurance brokers or insurance agents will not be accepted. See Section III, Scope of Work, for detailed scope and requirements.

SECTION I	Introduction
SECTION II	Instructions to Proposer
SECTION III	Scope of Work, Evaluation Criteria, Proposal Submission Format, and Required Forms
SECTION IV	Contract Documents, General Terms And Conditions, and Standard Clauses
SECTION V	Contract Terms and Conditions (Proposed)

PROPOSAL DEADLINE

Proposals will be accepted at the Agencies’ office at 430 Myatt Drive, Nashville, TN 37115, until 3:00 PM, Central Time (CT), June 1, 2023. Proposals received after this date and time will not be accepted. Proposals are not opened with regular mail.

QUESTIONS/CLARIFICATION DEADLINE

All questions, requests for clarification, and other inquiries related to this RFP must be received by Denise Richardson, no later than 3:00 PM. Central Time (CT), May 23, 2023, via e-mail to: Denise.Richardson@nashville.gov.

PRE-PROPOSAL MEETING (NON-MANDATORY)

A virtual pre-proposal meeting will be held via Webex at 10:00 AM CT, May 12, 2023

Please email Denise.Richardson@nashville.gov by 9:00 AM, May 12, 2023 at 9:00 AM to RSVP and obtain meeting login information.

While attendance is not mandatory, proposers are encouraged to attend and participate. The purpose of the pre-submission meeting is to address the solicitation requirements and the procurement process.

ADDENDA REQUEST

Proposers are not to contact other Agency personnel with any questions or clarification concerns in reference to this RFP. The Procurement Department will provide all official communication concerning this RFP. Addenda requests MUST be submitted before the due date to receive copies or notices of addenda.

I HAVE READ AND UNDERSTOOD THIS REQUEST FOR PROPOSALS (RFP) 2023109 and do herein request copies or notices of addenda. The information requested below must be received no later than, 3:00 PM (CT), May 12, 2023, via e-mail at Denise.Richardson@nashville.gov.

Company Name	Phone Number
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Address

Point of Contact	Email:
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I. INTRODUCTION

The mission of the Nashville Metropolitan Transit Authority is: To provide public transportation services to our community and its visitors so they can achieve greater mobility and experience a cleaner, healthier environment with less traffic congestion.

1.1 GENERAL

The Davidson Transit Organization (DTO) is the not-for-profit employer of staff for the Nashville Metropolitan Transit Authority and The Regional Transportation Authority. DTO has approximately 750 employees.

The mission of the Nashville Metropolitan Transit Authority (Nashville MTA), doing business as WeGo Public Transit, is to connect people to their lives and community by providing public transportation services to Nashville and the surrounding region to achieve greater mobility and experience a cleaner, healthier environment with less traffic congestion. Nashville MTA provides public transportation services, including 26 bus routes, to citizens and visitors within the Metropolitan Nashville area. Nashville MTA is a component unit of the Metropolitan Government of Nashville and Davidson County. Prior to the pandemic, WeGo Public Transit provided approximately 31,000 rides each weekday during full service. Nashville MTA is funded by a combination of federal, state, and local grants and direct allocations, as well as farebox revenue.

In addition to bus service, Nashville MTA also operates a paratransit system network of smaller ADA accessible vans for its Access program for people with disabilities. Nashville MTA also contracts with third-party operators to provide its Access on Demand services for customers eligible for Access services.

For additional information, please see: <https://www.wegotransit.com/>.

1.2 OVERVIEW

Each agency intends to award a Contract(s) to the successful Proposer(s) who shall provide Third Party Administrator Services. Refer to Section III of this RFP for an expanded description of the Scope.

Each agency shall enter into a Fixed Price Contract and/or Purchase Order with the selected Third Party Administrator. The contract and/or purchase order shall be for an initial term of three (3) years with one additional two (2) year extension option.

Proposers shall submit cost information as detailed in Form 1, Cost Form. Non-profit and government discounts should be noted.

These instructions provide detailed legal and technical requirements for the acquisition of these services. Section V, Proposed Contract, provides a more detailed description of the legal requirements.

1.3 SOLICITATION SCHEDULE

The following estimated timeline should be used as a working guide for planning purposes. The Agencies reserve the right to adjust the schedule as required during the course of the solicitation process. The Agencies will make good faith efforts to notify potential proposers of adjustments to the schedule; however, the proposers have ultimate responsibility for obtaining notice of changes. Any changes to the proposed schedule will be listed at: <https://www.wegotransit.com/doing-business/current-opportunities/> - RFP 2023109 – Third Party Administrator Services.

Pre-Proposal meeting	10:00 AM CT, Friday, May 12, 2023 via Webex
Addenda Request Submittal Deadline	3:00 PM CT, Friday, May 12, 2023
Question/Clarification Submittal Deadline	3:00 PM CT, Tuesday, May 23, 2023
Proposal Submittal Deadline	2:00 PM CT, Friday, June 2, 2023
Presentation/Interviews (if applicable)	Week of June 15, 2023 (tentative)

All questions must be submitted in writing via email to: Denise.Richardson@nashville.gov. The answers to the questions will be posted at: <https://www.wegotransit.com/doing-business/current-opportunities/> - RFP 2023109 – Third Party Administrator Services. Proposers are solely responsible for checking the website to insure that they have the most current information regarding the RFP. Any oral communication, explanation or instruction provided will not be binding on the Agencies.

1.4 COST INCURRED BY PROPOSERS

The Agencies are not liable for any costs incurred by prospective proposers in the preparation of submitting a proposal in response to this RFP, in presentation of the Proposal or any other activities related to responding to this RFP.

1.5 EVALUATION OF PROPOSALS

An Evaluation Committee and/or the Procurement Department will examine proposal submissions to eliminate those which are determined non-responsive to the stated requirements. The Evaluation Committee will then evaluate the proposal submissions and make recommendations of the top-ranked company offering the best value to the Agencies for contract award.

The Evaluation Committee will apply the evaluation criteria set forth in the RFP or in any addenda issued. A detailed evaluation that follows the initial examination may result in more than one finalist. At this point, the Evaluation Committee may request additional information, request an interview, request a presentation, and/or request revised or best and final offers.

Should interviews or presentations become necessary, the Agencies will contact the top-scoring firm(s) from the evaluation to schedule a date and time. The Agencies reserve the right to award a contract from this solicitation to more than one firm.

1.6 EVALUATION SCORING MEASURES

The Evaluation Committee will evaluate submissions received on the following factors.

- Services Provided - 40 points
- Proposing Team & Key Personnel Qualifications and Experience - 30 points
- Acceptance of Contract Terms - 10 points
- Cost – 20 points

Proposers are directed to Section III, B - Evaluation Criteria, for detailed evaluation criteria and applicable points allocation.

1.7 PROPOSAL ACCEPTED

Each proposer submits its proposal with the understanding that the acceptance in writing by the Agencies of the offer to furnish the services requested shall constitute a contract between the proposer and the Agencies, which shall bind the proposer to furnish the services at the rates quoted, and in accordance with conditions and requirements of the Agencies. A formal contract will be signed between the Agencies and the successful proposer(s), or a purchase order will be issued to the awarded firm.

Each proposer submits its response with the understanding that nothing in this solicitation shall be construed to require the Agencies to award a contract.

Proposers must indicate that the company is prepared to enter into a contract with the Agencies in accordance with the terms and conditions set forth in this solicitation, any addenda, and the proposed contract. Proposals shall be valid for a minimum period of one hundred twenty days (120) from the date of the Agencies' receipt of the proposals.

1.8 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

In connection with this project, the Agencies have established a specific goal for Disadvantaged Business Enterprise (DBE) participation. Proposers are required to make good faith effort to cooperate with Nashville MTA in meeting its commitments and goal of **14%** participation goods and services for the fiscal years 2021-2023. DBE participation is encouraged either in the capacity of the prime contractor or subcontractor. Proposers are required to document their activities in the proposal and selection of any subcontractor(s) to ensure that the process is nondiscriminatory. To be considered a certified DBE, the organization must be registered with the Tennessee Uniform Certification Program (TNUCP) at the time of proposal submission. Utilize the following website for a comprehensive list of certified DBE's: <https://www.tdot.tn.gov/APPLICATIONS/DBEDIRECT/Search> .

END SECTION I

II. INSTRUCTIONS TO PROPOSERS

2.1 REQUESTS FOR CLARIFICATION

If any person submitting a proposal is in doubt as to the true meaning of any part of the Scope of Work, other proposal documents, finds discrepancies in or omissions from the specifications, they may submit to the Procurement Department a written request for an interpretation or correction, no later than 3:00 PM CT, May 23, 2023. Only written requests via email to: Denise.Richardson@nashville.gov will be accepted. The person submitting the request will be responsible for its prompt delivery and verification of delivery.

The request must be fully supported with detailed information and reference to a section of the proposal, if applicable, to assist the Agencies in determining whether the request is or is not valid. Any corrections or changes to this proposal will be distributed to recipients who submitted the “Addenda Request” at the email address provided. **Verbal questions will not be answered, thus preventing an unfair advantage to any proposers.**

All answers to questions will be posted on the website: <https://www.wegotransit.com/doing-business/current-opportunities/> - RFP 2023109 – Third Party Administrator Services.

2.2 DELIVERY OF PROPOSALS

Proposers must submit (1) Original and (1) Electronic Copy (USB) of the proposal submission, including **ALL** required forms by 2:00 PM Central Time (CT), June 2, 2023 to the following address:

Denise Richardson
Procurement Administrator
DTO and Nashville MTA
430 Myatt Drive
Nashville, TN 37115

The sealed envelope, box, or appropriate package must be marked with “**RFP 2023109 – Third Party Administrator Services**” on the lower left side and “**DO NOT OPEN WITH REGULAR MAIL.**” The Agencies will not consider proposals received after the deadline. All proposals will be logged, by a Procurement Staff member, with the date and time of receipt.

Proposers are solely responsible for delivery of their proposal on time. Proposers who rely on overnight delivery services, local couriers, or other delivery services remain solely responsible for timely delivery of the proposal and assume all risk of late delivery or no delivery.

****NOTE: RESPONSES WILL NOT BE OPENED PUBLICLY****

2.3 PROPOSAL WITHDRAWAL

A proposer will be given permission to withdraw their Proposal after it has been delivered to the Agencies provided the proposer makes its request by e-mail, on the proposing organization's letterhead, twenty-four (24) hours prior to the proposal due date and time. Requests pertaining to withdraw by e-mail must be confirmed in writing by the proposer and must reach the office of Denise Richardson not later than one (1) hour before the time fixed for submission of proposals. Proposals which are timely withdrawn shall be returned to the proposer unopened, at the proposer's expense.

2.4 UNACCEPTABLE PROPOSAL

The Agencies will not accept proposals or award any contract to any person, firm or corporation that is in arrears or is in default to the Agencies upon any debt or contract, has defaulted on surety or other obligation or has failed to perform faithfully any previous contract for the Agencies. The Agencies reserve the right to request subcontractor changes to any contract.

2.5 REJECTION OR ACCEPTANCE OF PROPOSAL

The Chief Executive Officer or designee reserves the right to accept or reject any or all or any part of any proposal. Any proposal which is incomplete, conditional, obscure, or which contains additions not called for, or irregularities of any kind, may be cause for rejection of the proposal. If there is a discrepancy between the price written and the price listed in figures, the Agencies acknowledge that the price written is the correct price.

It is the intent of Agencies, if they accepts any alternates, to accept them in the order in which they are listed in the proposal Form. Determination of the lower proposers shall be on the basis of the sum of the base proposal on the alternates accepted. However, the Agencies shall reserve the right to accept alternates in any order which does not affect determination of the lower proposers.

The Agencies reserve the right to cancel this RFP in writing or postpone, or extend the date and time for submitting proposals at any time. The Agencies reserve the right to reject any or all proposals, to waive any or all informalities or irregularities in the proposals received, to investigate the qualifications and experience of any proposers, to reject any provisions in any proposal, to modify proposal contents, to obtain new proposals, and to negotiate the requested services and contract terms with any proposers. The Agencies reserve the right to award the proposal's requested services in full, in part and/or a single item to one or more proposers. The Agencies will determine the most responsive proposers whose proposal is most advantageous.

The submission of a proposal shall constitute an acknowledgement that the proposer has thoroughly examined and is familiar with the RFP, including the Scope of Work, the addenda if any, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions dealing with or related to the services requested.

Proposals must indicate that the firm is prepared to enter into a contract and/or purchase order with the Agencies in accordance with the terms and conditions set forth in this RFP, any addenda, and

proposed contract. Proposals shall be valid for a minimum period of one hundred twenty days (120) from the proposed closing date for acceptance by the Agencies.

2.6 PUBLIC RECORDS/CONFIDENTIALITY

The proposals received become the exclusive property of the Agencies. When a contract award is approved by the Agencies, all proposals submitted in response to this RFP shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each proposal that are marked as "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY." If required by law or by an order of a court, the Agencies may be required to disclose such records or portions thereof, including without limitation those so marked. Proposals that indiscriminately identify all or most of the proposal submission as exempt from disclosure without justification may be found to be technically unacceptable.

2.7 FORMS PROVIDED

Proposers must submit their proposals on the forms provided or copies thereof. The proposer or an authorized representative of the firm must sign the proposal submission. Any erasures, corrections or other changes appearing on the proposal form must be initialed and dated by the person signing the form.

END SECTION II

III. SCOPE OF WORK, EVALUATION CRITERIA, PROPOSAL SUBMISSION REQUIREMENTS, REQUIRED FORMS

A. SCOPE OF WORK

1. INTRODUCTION

Nashville MTA and its 501-c3 employment arm, Davidson Transit Organization (DTO), are seeking a third-party administrator (TPA) to manage all claims incurred through workers' comp for employees and third-party accident and liability claims. DTO currently has approximately 750 benefit eligible employee participants with approximately 550 of those being unionized maintenance workers and bus operators. The Nashville MTA revenue fleet is comprised of 260 buses and paratransit vans as well as approximately 60 administrative support vehicles.

DTO's Workers' Comp and Nashville MTA's liability and auto accident insurance programs are currently administered by a TPA who is responsible for all claims management, legal support, and claim payments. The Work Comp and Liability auto accident programs have separate company-controlled bank accounts from which the TPA issues claims checks on a periodic basis.

The TPA works closely with Safety and Security Department employees for both workers' comp claims and third-party liability and auto accident/physical damage claims. Currently, there is a monthly claims meeting convened by the insurance brokerage team that includes the current TPA and key internal company employees to discuss all new claims for the past month as well as the status of other outstanding open claims. The TPA may also call special meetings as needed for claims management strategy or settlement proposals and litigation.

2. GENERAL REQUIREMENTS

Both agencies seek the services a Third-Party Administrator (TPA)/Administrative Services Only (ASO) firm for its self-insured workers' comp plan and its liability and auto accident program. Entities responding to this RFP must be direct writing, third party administration and claims paying companies. Proposals from insurance agents and brokers will not be considered. The Agencies request that proposers offer a dedicated adjuster team. Proposers not offering a dedicated adjuster team should explain in their proposal response how they will provide the requested services to the Agencies.

Workers' Comp is currently covered with a \$500,000 excess coverage insurance policy while liability coverage has a \$3 million limit with a \$100,000 SIR. The physical damage policy also has a \$100,000 deductible.

Respondents must submit proposals for the services designated below. These services can be procured for a single or multiple providers to assure among other things: streamlined employee point of contact; care continuity; optimal electronic data interface, and as smooth a transition as may be required and allow Nashville MTA and DTO to select the most appropriate provider to meet each agency's specific needs.

Services solicited under this RFP include: (1) third party administration of workers' compensation claims; (2) third party administration of third party liability claims; (3) third party administration of auto accident and physical damage claims. Proposers may propose on all or some of the services. Proposers must clearly indicate in the cover letter accompanying the proposal the services they are proposing to provide.

Proposers are advised that the Agencies will require the selected proposer(s) to obtain authorization from the Agencies for all settlements prior to offer settlement and for legal matters for all liability and workers' compensation matters. In submitting a proposal in response to this RFP, the proposer is agreeing that retain specified legal counsel as designated by the Agencies.

While proposers may indicate in their proposal approach how they will provide the services, to be responsive, all proposal approaches must include the following minimum service commitments:

- 1) participation in no less than monthly meetings with management to review all claims status;
- 2) meetings as needed with management to discuss specific claims settlement proposals and/or strategy.

3. DETAILED REQUIREMENTS (LIABILITY AND AUTO ACCIDENT CLAIMS)

The selected TPA's services for liability and auto accident claims shall include, but not be limited to:

1. Service, review, investigate, adjust, process and/or resist claims presented against the Agency.
2. Establish claims reserves for each such claim and provide continuous review of and continually update claims reserves to reflect the establishment and/or change in claims reserves.
3. Acknowledge to the Agency, in writing, the receipt of all such claims, on an agreed basis.
4. Acknowledge to the Agency, in writing, all such claims that have been closed, on an agreed basis, such acknowledgement to contain the date the claim was closed and the amount paid.
5. Acknowledge to the Agency, in writing and on an agreed basis, the receipt of all lawsuits, such acknowledgement to contain the name of the Agency's defense firm assigned to the case and a copy of the complaint or bill filed. As litigation proceeds, TPA shall keep the Agency apprised, to the extent reasonable, of the dates of discovery requests, depositions, conferences and trials.
6. Provide a narrative report to the Agency on any such claims where the total incurred claim, inclusive of any reserves established, exceeds One Hundred Thousand and 00/100 Dollars (\$100,000.00), and communicate such information to the Agency's insurance broker contact as well as the liability and/or physical damage insurance company.
7. Prepare and maintain an electronic claim file for each such claim, such file to be open at all reasonable times for inspection and copying by the Agency and its agents, servants, employees and officers, upon request.

8. Prepare, maintain and file any and all records and reports that may be required by any state regulatory agencies in connection with TPA's handling of such claims, as instructed by the Agency.

4. DETAILED REQUIREMENTS (WORKERS' COMPENSATION CLAIMS)

The selected TPA's services for workers' compensation claims shall include but not be limited to:

1. Use all reasonable efforts to provide to DTO certain claims services necessary for the day-to-day servicing of the Program. The obligation to provide such services shall be limited to DTO's Program that are:
 - (i) reported to TPA by the DTO;
 - (ii) reported, or occurs, in the states in which the TPA is appointed to handle claims on behalf of DTO;
 - (iii) old claims previously reported to TPA by DTO pursuant to a previous service company/third party administrator Agreement(s); or
 - (iv) old claims that have been serviced by a previous service company/third party administrator and which TPA hereby agrees to assume servicing responsibility for as provided herein. The obligation is further limited to such claims as are properly within the competent jurisdiction of a court or administrative tribunal, and which are filed and pursued by the claimant, in the state or states in which the TPA is appointed to handle claims on behalf of the Agencies.

The selected TPA agrees to assume servicing responsibility as provided herein for other states as and when requested by DTO so long as DTO has added such State(s) to the Programs, and:

- (i) TPA may lawfully perform service company/third party administrator services in that state for the line(s) requested, or
- (ii) TPA may lawfully subcontract with a subcontractor in that state and TPA successfully negotiates a subcontract with a subcontractor for the line(s) requested.

In particular, the selected TPA shall:

1. Service, review, investigate, adjust, process and/or resist claims presented against DTO under this Agreement;
2. Establish claims reserves for each such claim and provide periodic review of and continually update claims reserves to reflect the establishment and/or change in claims reserves;
3. Acknowledge to DTO, in writing, the receipt of all such claims, on an agreed basis;

4. Acknowledge to DTO, in writing, all such claims that have been closed, on an agreed basis, such acknowledgement to contain the date the claim was closed and the amount paid;
5. Acknowledge to DTO, in writing and on an agreed basis, the receipt of all lawsuits, such acknowledgement to contain the name of DTO's defense firm vendor assigned to the case and a copy of the complaint or bill filed. As litigation proceeds, the TPA shall keep DTO apprised, to the extent reasonable, of the dates of discovery requests, depositions, conferences and trials;
6. Provide a narrative report to DTO on any such claims where the total incurred claim, inclusive of any reserves established, exceeds One Hundred Thousand Dollars (\$100,000.00);
7. Prepare and maintain an electronic claim file for each such claim, such file to be open at all reasonable times for inspection and copying by DTO and its agents, servants, employees and officers, at DTO's expense upon request;
8. Provide customized first report of injury letter to employer immediately after claim is reported;
9. Prepare, maintain and file any and all records and reports that may be required by any state regulatory agencies in connection with TPA's handling of such claims, as instructed by DTO; and
10. Communicate with and pay out of the Agency's claims fund account such disability (lost time; indemnity) benefits, medical benefits, death benefits, allocated loss expense and any other loss and expense as may be required to comply with applicable laws, including any judgments or expenses;
11. Offer a telephonic and field case management assignment process;
12. Provide a risk management information system that includes online access for authorized Agency personnel to claims notes, medical notes, financial transactions;
13. Offer in person quarterly claims reviews and an annual in person stewardship review

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B. EVALUATION CRITERIA

The Evaluation Committee will evaluate proposal submissions on the following factors.

- Services Provided (40 points)
- Proposing Team & Key Personnel Qualifications and Experience (30 points)
- Cost (20 points)
- Acceptance of Contract Terms (10)

Evaluation Criteria and Point Score Allocation:

Criterion	Standard	Points Value
Services Provided	<ul style="list-style-type: none"> • Do the services provided meet the Agencies’ needs? • Will the proposers’ communication plan keep the Agencies’ informed as to cost and status of claims? • Does the proposer offer a risk mitigation / claims reduction strategy that can be implemented by the Agencies? • Does the proposal indicate that the proposer will offer outstanding customer service and communication? • Are the proposer’s sample reports clear, understandable, and easily interpreted? • Does the proposer’s communication protocol for claimants meet the Agencies’ customer service expectations? • To what extent does the proposal demonstrate a thorough, thoughtful, and efficient approach to providing claims administration? • What is the team’s process for implementing best practices and ensuring compliance with those practices? • Does the proposer demonstrate that it will offer a high quality of service delivery? • How will the proposer control and manage claims settlement costs? • How will the proposer manage workers comp. claims? • Does the proposer offer robust claims management and customer service quality assurance? • Will the proposer’s reporting and data analytics capabilities offer the Agencies the information needed to manage and reduce claims? • Will the proposer’s approach to managing workers’ comp claims offer needed medical services while at the same time ensuring that employees return to work when ready for duty? • Does the proposer have a robust process for identifying and addressing potentially fraudulent claims? • Does the proposer offer dedicated personnel to this engagement? • How will the proposer manage staffing and caseload to assure quality service delivery to the Agencies? • Do the proposer’s standard reports provide the information the Agencies need to effectively manage and monitor claims and payouts? • Does the proposer offer a risk management strategy that will meet the Agencies’ need to control claim risks and costs? • Does the proposer offer a claims management process that includes timely communication with claimants and the Agencies? 	40

<p>Proposing Team & Key Personnel Qualifications and Experience</p>	<ul style="list-style-type: none"> • Does the proposer specialize in TPA services? • What is the proposer’s overall experience providing TPA services? • Has the proposer included minority, woman or disadvantaged businesses in the project team? • What is the proposer’s previous experience providing third party administration services for workers’ comp and other liability claims? • Does the proposer have previous experience as a TPA for bus-oriented transportation services or public transit agencies? • Does the account manager have previous experience as a TPA for bus-oriented transportation services or public transit agencies? • Did the proposer’s references indicate positive experiences with the proposer and were the proposer’s recommendations implemented by the reference? • Would the reference(s) engage the proposer again for TPA services? • Has the proposer’s previous work reduced the cost of claims and related losses for its previous or current clients? • Does the proposer’s staff training program offer the Agencies’ assurance that their claims will be professionally managed? • Does the proposer have a track record of personnel continuity assigned to accounts? • Does the account manager have previous experience managing workers’ comp and/or liability claims? • Does the proposer’s track record of staff turnover assure the Agencies that their claims will be managed by an account team that will maintain continuity of services? • Have the proposing team members previously worked together to deliver a successful public transit system security assessment and implemented recommendations? • How will subcontractors’ work be managed? • Does the level of engagement of principal personnel reflect the proposer’s overall engagement with the effort? • How would this engagement relate to the proposer’s overall expertise? • Have the key personnel previously performed the elements in the scope of work? • Do the personnel working on the project have necessary skills and experience to successfully provide the services requested? • What will the level of involvement of key personnel be for this project in relation to the proposer’s other ongoing work? 	<p>30</p>
<p>Compliance with Contract Terms</p>	<ul style="list-style-type: none"> • Does the proposer accept the Agencies’ contract terms? • If there are exceptions, do the exceptions create an adverse risk situation for the Agencies? 	<p>10</p>
<p>Cost</p>	<ul style="list-style-type: none"> • Does the cost of services provide value to the Agencies? • Does the cost of services offer the Agencies the best value in a combination of experience, approach, and cost? 	<p>20</p>
<p>Total Points</p>		<p>100</p>

C. PROPOSAL SUBMISSION REQUIREMENTS

Proposers shall include all of the items listed below in the order shown in their proposals. Each section should be clearly labeled. This format is necessary for evaluation purposes.. Proposers shall utilize Form1: Cost Form for the cost proposal submission.

Proposals shall be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content with sufficient detail to allow for accurate evaluation and comparative analysis.

Proposals shall include six (6) sections organized in the specific order outlined below.

GENERAL SUBMISSION REQUIREMENTS:

Submissions must conform to the page count limits specified in each section. Photos, graphics, charts, and other materials are to be included in the page number count required in each section. Text font size is to be no smaller than 10 throughout the entire proposal submission; all pages in the submission are to be 8 ½" x 11", standard size. Proposers are advised that the evaluators may elect to print some or all pages of the proposal submission to facilitate review. Proposers are advised to consider how a proposal submission will look when printed on a standard office copier.

PART I

COVER PAGE AND COVER LETTER

All proposals shall be accompanied by a cover letter of introduction and executive summary of the proposal that shall not exceed **ten (10) consecutively numbered (1-10) pages**.

The cover letter and executive summary shall:

1. Identify the services for which the TPA is proposing
2. Briefly introduce the proposer, providing a summary of the proposer's administration, organization and staffing, and identify the office location from which the agencies' claims will be processed and the location where the personnel performing the work will be based;
3. Clearly state the responsible contact person's title and contact information;
4. Describe the proposer's qualifications for successfully providing the services;
5. Summarize the roles, responsibilities, and qualifications for proposed subconsultants;
6. Describe the proposer's experience in the last three (3) years in providing TPA services for the services for which the TPA is submitting a proposal;
7. Summarize the services provided for the organizations for which the proposer is submitting as references. Proposers are advised that current or previous work for Nashville MTA or RTA

is not to be used as a reference.. Proposers must provide the description of the services provided, the name of the client, contact name, telephone, and email address. Proposers should verify the reference's contact information before including the reference in the submission. **References are to be provided on Form 11 – References** – included in the Forms section of the proposal submission;

7. Provide a clear and concise summary of the overall approach to providing services, the team's expertise, and how critical issues will be identified and addressed.

PART II

SERVICES PROVIDED

In this section, which shall be limited to **not more than 20 consecutively numbered (1 – 20) pages in length, not counting the Part II Appendices**, the proposer shall outline the TPA services it will provide to MTA and/or DTO. In this section, the proposer should provide a narrative as to how it manages, processes, and resolves claims. This section should include at minimum, the following:

1. The Best Practices used by the proposer to ensure timely and accurate claims processing and how claims / procedures are monitored to ensure compliance with Best Practices. Describe the process for documenting all actions related to a claim, decision points for intervention and escalation, and client communication.
2. The process for ensuring compliance with Best Practices and the actions taken when Best Practices are not followed. The discussion of the proposer's Best Practices should be sufficiently detailed to enable the Agencies to determine how their claims will be managed and processed.
3. If not included in Best Practices, describe the Key Performance Indicators (KPI's) used to monitor performance.
4. The process for handling emergency issues during and/or after normal working hours.
5. Confirmation that all phone calls and emails will be returned/responded to within a business day and that 3-point contact will be initiated within 24 hours.
6. The approach to claim services (i.e. dedicated unit, supervisor and unit manager, whether processor will be assigned for the life of the claim or will the claim transition as the status changes), whether the processor is responsible for multiple clients or a single entity.
7. The average caseload for Auto Liability, General Liability, and Workers' Compensation adjusters.
8. Specify the caseload for by BI/PD, Indemnity, Medical Only, and Record Only claims.
9. State the average number of new claim assignments per adjuster per week/month.

10. The average number of cases supervisors process personally; outline the process for supervisor involvement in a claim.
11. Provide statistics on the closing ratio and closing lag.
12. Provide the current supervisor to adjuster ratio and include the ratio that will be used for MTA and DTO claims. Outline the protocol for supervisor involvement including fixed diary requirements.
13. The process for maintaining and updating records:
 - Detail how frequently claim files are updated for adjuster notes, financial information, resolution plans, etc.
 - Advise whether the system is paperless and if all correspondence is retained in electronic format
 - Detail timing delays between entry of data in the claims system and visibility of that data in the external RMIS system, including both claims and managed care information
 - Confirm that managed care notes are included in the same system as adjuster notes.
 - Detail any difference between client access to notes versus adjuster access to notes
 - Confirm that the system allows for entry, tracking and reporting of:
 - a. Claims data by client specific coding (location, department, division, etc.)
 - b. Policy information and whether that information can be attached to a claim
 - c. Exposures
 - d. Cause codes
 - Describe ad hoc and custom reporting capabilities and provide examples of ad hoc reports to illustrate the ability to produce the following:
 - a. Loss stratification
 - b. Ability to create graphs within a report
 - c. Ability to create scorecards and dashboards
 - d. Automated import into Excel, Access, Word or to PDF format
 - e. Litigation reports, trial and mediation calendars
 - Describe bank reconciliation, cash disbursement system, audit trails and overall financial controls
 - Describe options, arrangements and all fees for banking and escrow loss funding
14. If proposing for workers' comp claim services, describe the process for medical case management including, but not limited to the following:
 - Decision points for intervention
 - Frequency and duration of case manager intervention
 - Processes for bill review, approval and payment
 - Management of provider networks, including utilization of credentialing and/or outcomes management
 - Process for nominating physicians and facilities to the proposer's provider network
 - Utilization of physician review, IME and other ancillary services
 - System for tracking lost workdays

- Cost containment reports
 - Outline medical case management and cost containment services
 - All medical cost containment services provided to the proposer by an outside vendor, including PPO, Nurse Triage, Dedicated NCM or any other proposed services
15. The current subrogation process. Provide sample reports for monitoring subrogation activity and recovery
 16. A description of the proposer’s claims investigation process, including the process used to evaluate the validity of a claim.
 17. The process for identifying claims having fraud potential, including the process for referring those claims for investigation. Describe the parameters of that investigatory process.
 18. The processes for managing and/or recommending litigation and/or settlements, including managing schedules to assure that key action dates are not missed, and legal billing review practices to ensure that litigation is managed in the most efficient and cost-effective manner.
 19. The process for settling billing disputes and claims’ handling disputes.
 20. Any other information the proposer deems pertinent to demonstrate its approach to the efficient administration of claims brought against the Agencies.

In an “Appendix A” to Part II, the proposer should include a flowchart of its claims management process, indicating in detail the flow of information, decision points, supervisor intervention, etc. for Auto Liability, General/Products Liability, and Workers’ Compensation claims and sample reports that it will use to inform the Agencies. Appendix A should contain no other information than what is requested.

The proposer should also include an “Appendix B” to Part II that includes the proposer’s performance guarantees that it is offering to the Agencies. Proposers are advised that Appendix B information will be included in the final contract and will be used by the Agencies for monitoring and evaluating the selected proposer’s performance over the term of the contract. The performance guarantees must include a specific agreement that the proposer will adhere to Agency service instructions.

In an “Appendix C,” the proposer should include sample reports that it will use to communicate to the Agencies. Appendix C should be limited to five (5) pages.

PART III

PROJECT TEAM

This section, which shall be no longer than **five (5) consecutively numbered pages** (excluding organization chart and team member resumes) should include a detailed discussion of the full proposal team, including the relationship between subcontractors, if any, and the prime, how the team will be integrated to ensure

a cohesive work product, and a representation of each team member's qualifications. At minimum, this section must include:

1. A Project Team Organization Chart that identifies participating subcontractors, responsibilities, key personnel, and their positions/titles. The Organization Chart should indicate which responsibilities each firm and/or individual will be assigned. The Organization Chart does not count toward Part III's total page count limit.
2. Resumes for Project Team Members. Note: Resumes should be presented in an Appendix to Part 3. Resumes must be limited to one 8 ½" x 11" page per individual and must identify the member of the proposing team with which the individual is affiliated, the length of time the individual has worked at the firm, the individual's primary work location, education and experience, and indicate the individual's previous experience performing the tasks to which the individual is assigned. Resumes are to be submitted for only those personnel that will actually be assigned to work on the project.
3. The location of all personnel proposed to be assigned to the engagement and the location from which the Agencies' account(s) will be managed.
4. Information regarding turnover ratio and the process for managing processing staff turnover.
5. A detailed explanation of the roles of subcontractors and discuss the process for overseeing and integrating subconsultants' work into the final product.
6. An acknowledgement that key individuals named in the proposal will not be replaced without advance notice and that replacement personnel will be subject to the Agency's approval.
7. A disclosure of any potential conflicts of interest that may affect the proposing team's or any key personnel's ability to perform an assignment for the Agency.

PART IV:

ACCEPTANCE OF THE PROPOSED CONTRACT TERMS AND CONDITIONS

If a proposer has exceptions to the contract terms, the Scope of Work, or any other aspects of the RFP, the proposer MUST include the exceptions in this section. Proposers are advised that the Agencies will NOT consider changes to contract terms that are raised after the proposals have been evaluated. Submissions that include statements that exceptions to contract terms and conditions will be provided if the proposer is selected for contract negotiation will be deemed non-responsive and will not be evaluated.

PART V

COST PROPOSAL

Proposals must include a complete Form I - Cost Proposal Form(s), located in Section D – Required Forms. If a discount off retail pricing for items not specifically listed on Form I is available, please provide that information. Also include any other pricing discounts or offers that will assist the Agencies in obtaining the best possible pricing for the services provided.

Accompanying the signed cost proposal form, the proposer should include an itemization of the services and associated rates that are included in the annual fee offered in the cost proposal. The sum of the itemization must equal the annual fee proposed. The annual fee must be inclusive of all charges unless the proposer is offering additional itemized services that the Agencies may engage on as needed basis. These services are to be itemized and described in the cost proposal.

If the proposer requires software license fees for the Agencies’ access to its systems, these fees and fee structure must be itemized in the cost proposal detail.

Proposers proposing on workers’ comp TPA services must include in their cost proposal an itemization of:

- Medical management and medical cost containment fees
- Medical cost containment services included in the claim service fee
- Medical cost containment services provided by the proposer or vendor partners that are not included in the claim service fee with the itemized charges

PART VI

REQUIRED FORMS

The Agencies require proposers to complete and submit with the proposal response all forms indicated in the Forms section.

Cost Form1 (Part V of the Proposal Submission)	Forms 6 A - 6D Disadvantaged Business Enterprise Program (not required for this solicitation)	Form 11 - References	Insurance Certificate (not required with proposal submission)
Form 2 Acknowledgment of Addenda	Form 7 Certificate of Authority	Form 12 Affidavits	DBE Certificate (may be requested for DBE status verification)
Form 3 Affidavit & Information Required for Proposers	Form 8 Certification of Restrictions on Lobbying	Form 13 Notice to Contractor	License (not required for this solicitation)
Form 4 Proposer’s Certification of Eligibility	Form 9 Certification of Debarment, Suspension Primary	Forms 14 and 15 - Buy America <i>INTENTIONALLY OMITTED</i>	Permits (not required for this solicitation)
Form 5 Compliance with Specifications	Form 10 Certification Debarment, Suspension Lower-Tier	Form 16 Subcontractor Utilization Plan	

D. REQUIRED FORMS

FORM 1 COST FORM - RFP 2023109 - Third Party Administrator Services

The successful Proposer agrees to provide the services as specified in the RFP or any addenda at the rates indicated below. The rates quoted are exclusive of Federal, State and Local taxes, and includes all charges to Nashville MTA and DTO. Discounts for non-profit and government agencies should be listed. The proposer may provide a price to one or both Agencies. The Agencies reserve the right to award a contract to multiple proposers.

Term	MTA Accident and Liability Claims	DTO Workers' Comp. Claims
1ST Year Annual Fee		
2nd Year Annual Fee		
3rd Year Annual Fee		
4th Year Annual Fee		
5th Year Annual Fee		
Total		

Company

Authorized Signature /Date

Name Printed

Title

FORM 2

ACKNOWLEDGMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda to the Proposal documents: (If none received, write none)

ADDENDUM NUMBER: _____ DATED: _____

ADDENDUM NUMBER: _____ DATED: _____

ADDENDUM NUMBER: _____ DATED: _____

ADDENDUM NUMBER: _____ DATED: _____

NOTE: Failure to acknowledge receipt of all addenda may cause the Proposal to be considered non-responsive to the Proposal. Acknowledged receipt of each addendum must be clearly established and included with the Proposal.

Company

Authorized Signature /Date

Name Printed

Title

FORM 3

AFFIDAVIT OF NON-COLLUSION

Affidavit and information required for Contractor:

I hereby swear, or affirm, under the penalty for perjury:

(1) That I am the Contractor (if the Contractor is an individual), a partner in the Proposal (if the Contractor is a partnership), or an officer or employee of the proposing corporation with the authority to sign on its behalf (if Contractor is a corporation).

(2) That the attached Proposal or Proposals or any subsequently submitted best and final offer have been arrived at by the Contractor independently and have been submitted without collusion with, and without any agreement, understanding, or planned course of action with, and other vendor of materials, supplies, equipment, or services described in the Request for Proposals, designed to limit independent proposing or competition.

(3) That the contents of the Proposal or Proposals have not been communicated by the Contractor, or its employees, or agents, to any person not an employee, or agent of the Contractor or its surety on any bond furnished with the Proposal or Proposals; and

(4) That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Company

Authorized Signature /Date

Name Printed

Title

Subscribed and sworn to before me the _____ day of _____, 20____.

Notary Public

My commission expires: _____

FORM 4

CONTRACTOR'S CERTIFICATION OF ELIGIBILITY

The _____ (Name of Contractor) hereby certifies that (Check appropriate box) is or is not included on the United States Comptroller General's "Consolidated List of Persons or Firms Currently Debarred for Violation of Various Public Contracts Incorporation Labor Standards Provision"

Company

Authorized Signature /Date

Name Printed

Title

SAM Number

DUNS Number

NOTE: The System for Award Management (SAM) is an official website of the U.S. government.

There is no cost to use SAM. You can use this site for FREE to:

- Register to do business with the U.S. government
- Update or renew your entity registration
- Check status of an entity registration
- Search for entity registration and exclusion records

<https://www.sam.gov>

Subscribed and sworn to before me the _____ day of _____, 20____.

Notary Public

My commission expires: _____

FORM 5

COMPLIANCE WITH SPECIFICATIONS

In submitting a Proposal the Contractor is sufficiently informed in all matters affecting the RFP, and that the Contractor has checked the Proposal for errors and omissions and hereby states that they will comply with the specifications in all areas including approved equals and addenda that were granted by the Agency.

Company

Authorized Signature /Date

Name Printed

Title

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

My commission expires _____

FORMS 6 – A - 6 – D - DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Forms 6 A – 6 D are **Intentionally Removed**

FORM 7

CERTIFICATE OF AUTHORITY

I hereby declare and affirm that I am:

CONTRACTOR IS A CORPORATION

CONTRACTOR IS A PARTNERSHIP

CONTRACTOR IS AN INDIVIDUAL

CONTRACTOR IS A JOINT VENTURE

I, the undersigned, as certified authority of the organization submitting the foregoing Proposal, hereby certify that under and pursuant to the By-Laws and Resolutions of said organization, each officers who has signed Proposals on behalf of the corporation, including the foregoing assurance of irrevocability, is fully and completely authorized so to do.

Company

Authorized Signature /Date

Name Printed

Title

Subscribed and sworn to before me the _____ day of _____, 20__.

Notary Public

My commission expires: _____

FORM 8

CERTIFICATION OF RESTRICTIONS ON LOBBYING

I _____ hereby certify on behalf of _____
(Name of Official) (Name of Contractor)

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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

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

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

Company

Authorized Signature /Date

Name Printed

Title

FORM 9

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION PRIMARY PARTICIPANT

The prospective contractor certifies, by submission of this Proposal, that neither it nor its “principals” as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency as defined at 49 CFR 29.940 and 29.945.

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

By signing and submitting its Proposal, the Contractor certifies as follows:

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

Company

Authorized Signature /Date

Name Printed

Title

FORM 10

CERTIFICATION OF LOWER-TIER PARTICIPANTS

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The prospective lower tier participant contractor certifies, by submission of this Proposal, that neither it nor its “principals” as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency as defined at 49 CFR 29.940 and 29.945.

By signing and submitting its Proposal, the Contractor certifies as follows:

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

Company

Authorized Signature /Date

Name Printed

Title

FORM 11

CONTACT INFORMATION OF SIMILAR CONTRACTS/REFERENCES

Proposers are advised that current or previous work for Nashville MTA, RTA, or DTO is not to be used as a reference. References should be for services provided as a third party administrator for workers' comp and/or accident and liability claims administration services. Proposers must provide, the name of the client, contact name, telephone, email address of the contact and a brief description of the work performed. Proposers should verify the reference's contact information before including the reference in the submission.

1. _____

2. _____

3. _____

4. _____

Company Name

Authorized Signature /Date

Name Printed

Title

FORM 12

AFFIDAVITS

State of _____ County of _____

As used herein, "Contractor" will include Proposers and.

Compliance with Laws: After first being duly sworn according to law, the undersigned (Affiant) states that he/she is the _____ (Title) of _____ (Contractor), and that Contractor is presently in compliance with, and will continue to maintain compliance with, all applicable laws. Thus, Affiant states that Contractor has all applicable licenses, including business licenses, copies of which are attached hereto. Finally, Affiant states that Contractor is current on its payment of all applicable gross receipt taxes and personal property taxes.

Contingent Fees: In accordance with the Metropolitan Government's 1992 Procurement Code, and the Agency Purchasing Policy and FTA rules it is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a the Agency contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned (Affiant) states that the Contractor has not retained anyone in violation of the foregoing.

Non-Discrimination: After first being duly sworn according to law, the undersigned (Affiant) states that by its employment policy, standards, and practices the Contractor does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal, or laying off of any individual due to his/her race, creed, color, national origin, age, or sex, and that the Contractor is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

It is the policy of the Agency, FTA and the Metropolitan Government not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of its contract with the Agency, Contractor certifies and warrants it will comply with this policy.

Company

Authorized Signature /Date

Name Printed

Title

Sworn to and subscribed before me on this ___ day of _____, 20___.

Notary Public
My commission expires: _____

FORM 13

NOTICE TO CONTRACTOR

The Contractor hereby agrees that the Chief Executive Officer and or the Board of Directors have the right to reject any or all Proposals and to waive informality in any Proposal and the Contractor shall not dispute the correctness of the quantities used in computing the best, responsive Proposal.

Company

Authorized Signature /Date

Name Printed

Title

FORM 14- BUY AMERICA CERTIFICATION- INTENTIONALLY REMOVED

FORM 15 - BUY AMERICA CERTIFICATION – INTENTIONALLY REMOVED

FORM 16

SUBCONTRACTOR INFORMATION

Please provide the following information pertaining to proposed subcontractors: Firm Name, Description of Work, Contractor License Number with Date Information (if applicable), SAM & DUNS Numbers, Anticipated Subcontract or Supply amount, and Anticipated DBE%.

A.

1. FIRM NAME	2. CONTRACTOR LICENSE NUMBER & DATE
3. AMOUNT	4. DBE%
5. SAM & DUNS #	6. DESCRIPTION OF WORK

B.

1. FIRM NAME	2. CONTRACTOR LICENSE NUMBER & DATE
3. AMOUNT	4. DBE%
5. SAM & DUNS #	6. DESCRIPTION OF WORK

C.

1. FIRM NAME	2. CONTRACTOR LICENSE NUMBER & DATE
3. AMOUNT	4. DBE%
5. SAM & DUNS #	6. DESCRIPTION OF WORK

D.

7. FIRM NAME	8. CONTRACTOR LICENSE NUMBER & DATE
9. AMOUNT	10. DBE%
11. SAM & DUNS #	12. DESCRIPTION OF WORK

Please copy Form 17 if you have more than four (4) subcontractors.

IV. CONTRACT DOCUMENTS, GENERAL TERMS AND CONDITIONS, AND STANDARD CLAUSES

4.1 CONTRACT DOCUMENTS

Any contract resulting from this RFP shall include the following;

- Request for Proposals No. 2023109 and all Addenda
- Proposer's Offer and Guarantee
- Proposal Award/Contract and all related Exhibits
- Federal Transit Administration Clauses– Exhibit A of the Contract
- State of Tennessee – Exhibit B of the Contract

The Contractor and appropriate parties of the Agencies will sign to execute contract.

Federal requirements may apply to this procurement and any future contract. If those requirements change then the most recent requirements shall apply. The Federal Government requires that activities financed in part, with Federal funds, and performed by a third party contractor and/or its subcontractors on behalf of the Agencies must be in accordance with Federal requirements.

All subcontracts and subcontractors employed under this contract are subject to the same conditions and regulations as set forth herein unless specifically exempted.

The prime contractor shall ensure that its subcontractors at all tiers are aware of and comply with these Federal regulations. The prime contractor is liable for subcontractor's compliance failures. Failure to comply will render the prime contractor responsible for damages and/or contract termination.

4.2 GENERAL TERMS AND CONDITIONS

1. GENERAL REQUIREMENTS

The Parties shall fully cooperate with one another, and shall take any additional acts that may be necessary, appropriate or convenient to attain the purposes of this proposal and any contract entered into.

2. PROPOSER AFFIDAVITS NON-COLLUSION

The proposer guarantees that the proposal submitted is not a product of collusion with any other Proposers and no effort made to fix the proposal price of any proposers, or to fix any overhead, profit or cost elements of any proposal price. An affidavit of non-collusion form is included and must be signed and submitted with the proposal.

3. INSURANCE REQUIREMENTS

During the term of the Contract, the selected proposer shall, at its sole expense, obtain and maintain in full force and effect for the duration of the Contract and any extension hereof the types and amounts of insurance identified in the Contract, **Section 16 – Insurance**.

Upon request, and to be considered for contract award, the proposer must provide a Certificate of Coverage with the Nashville Metropolitan Transit Authority and Davidson Transit Organization named as Certificate Holders.

The proposer shall indemnify and hold harmless the Agencies from any and all damages, loss or injury, lawsuits, claims, demands or liens resulting from any performance of proposer’s employees or subcontractors.

4. INTEREST OF MEMBERS OF THE AGENCY

No member of the governing body of the Agency, other officer, employee or agent of the Agency who exercises any functions or responsibilities in connection with the carrying out of the activities, to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract.

5. INTEREST OF OTHER LOCAL PUBLIC OFFICIALS AND STATE OFFICIALS

No member of the governing body of Metro, and no other public official of such locality, who exercises any functions or responsibilities in the review or approval of the carrying out of activities to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract. No part of the proceeds shall be paid directly or indirectly to any officer or employee of the State of Tennessee as wages, compensation or gifts in exchange for acting as officer, agent, employee, subcontractor, or proposer to the Agency in connection with any work contemplated or performed relative to this Contract.

6. INTEREST OF MEMBERS, OR DELEGATES TO CONGRESS

In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract, or to any benefit arising there from.

7. INTEREST OF THE PROPOSERS

The proposer covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The proposer further covenants that no person having such interest shall be employed in the performance of this Contract.

8. WORKERS COMPENSATION ACT

The proposer shall comply with the State Law known as the Workers’ Compensation Act and shall pay into the State insurance fund the necessary premiums required by the Act to cover all employees furnishing said services to the Agency, and under the control of the proposer, and shall relieve the Agency from any costs due to accidents and other liabilities mentioned in said Act.

9. SOCIAL SECURITIES ACT

The proposer shall be and remain an independent proposer with respect to all services performed and agrees to and does accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, and retirement benefits or annuities imposed under any State and Federal law which are measured by the wages, salaries, or other remunerations paid to persons by the proposer for work performed under the terms of this contract. The proposer agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or may be issued or promulgated under laws authorized by State or Federal officials; and proposer also agrees to indemnify and save harmless the Agency from any contributions or liability therefore.

10. EQUAL EMPLOYMENT OPPORTUNITY

In implementing the Project/Contract, the proposer may not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin. The proposer 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, sex, disability, age 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. The proposer shall insert the foregoing provisions (modified only to show the particular contractual relationship) in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

11. AUTHORITY TO ENTER CONTRACT

The proposer has all requisite power and authority to conduct its business and to execute, deliver, and perform services specified in the proposal and any Contract that may be issued. The proposer warrants that the individuals who have signed the proposal have the legal right and authority to bind the proposer.

12. AUTHORIZATION OF PROPOSAL

If the proposal is made by an individual doing business under an assumed name, the proposal shall so state. If the proposal is made by a partnership, the full name and addresses of each member and the address of the partnership shall be given and the proposal shall be signed by one member thereof. If the proposal is made by a corporation, it shall be signed in the corporate name by an authorized officer. If the proposal is made by a joint venture, the full name and address of each member of the joint venture shall be given and the proposal shall be signed by each venture. Form(s) is included to be filled out and submitted with the proposal.

13. SUBCONTRACT APPROVAL

Proposers shall contain a provision making the subcontractor(s) subject to all provisions stipulated in the Contract. The proposer shall be fully responsible for all services performed by any subcontractor.

14. COST/PRICE ANALYSIS

The Agencies reserve the right to conduct a cost or price analysis for any purchase or service. The Agencies may be required to perform a cost/price analysis when competition is lacking for any purchase. Sole source procurements or procurements which result in a single proposal received, will be subject to a cost/price analysis, which will include the appropriate verification of cost data, the evaluation of specific elements of costs and the projection of the data to determine the effect on proposal prices. The Agencies may require a pre-award audit, and potential proposers shall be prepared to submit data relevant to the proposed work which will allow the Agencies to sufficiently determine that the proposed price is fair, reasonable, and in accordance with Federal, State, and local regulations. Procurements resulting in a single proposal will be treated as a negotiated procurement and the Agencies reserve the right to negotiate with the single proposer to achieve a fair and reasonable price. If both parties cannot agree upon a negotiated price, the Agencies reserve the right to reject the single proposal.

All contract change orders or modifications will be subject to a cost analysis.

15. PRICING

The price quoted in any proposal submitted shall include all necessary cost to complete the services in accordance with the specifications. Anything omitted from such specifications, which are clearly necessary, shall be considered a portion of such cost although not directly specified or called for in the specifications. Proposers should note discounts.

16. PROMPT PAYMENT

The proposer agrees to pay each subcontractor for satisfactory performance of its contract no later than fifteen (15) days from receipt of each payment the proposer receives from the Agencies. Any delay or postponement of payment may occur only for good cause following written approval of the Agencies. This clause applies to both DBE and non DBE subcontractors. If the proposer determines the work to be unsatisfactory, it must notify the Agencies immediately, in writing, and state the reasons. Failure to comply with this requirement would be construed to be a breach of contract and subject to contract termination.

17. PROTEST

A. Definitions for Purposes of the section

The term “days” refers to working days of the Agencies.

The term “interested party” means any person (a) who is an actual proposer or prospective proposer in the procurement involved, and (b) whose direct economic interest would be affected by the award of the contract or by a failure to award the contract.

Note – WeGo will notify FTA regional office when it receives a third-party contract protest on a contract with substantial FTA funds (projects over \$500,000), and keep FTA informed about the status of the protest.

B. The Agencies will hear and consider a bona fide protest regarding its procurement actions. It is anticipated that the majority of protests will be evaluated and finally decided by the Agencies. Accordingly, the Agencies intend to provide a thorough review of all bona fide proposal protests. The Agencies' primary concern, however, is the timely procurement of needed capital equipment, supplies or services. It does not intend to allow the filing of protests to unnecessarily delay the procurement process, especially if the protest involved is vexatious or frivolous in nature.

Notwithstanding the availability of these protest procedures, any interested party is encouraged to exhaust all methods described in this section of resolving an issue before filing a formal protest with the Agencies. In its consideration of a protest, the Agencies reserve the right to give due consideration to the good faith efforts of the protestor to resolve the issue involved through informal methods.

C. Submission of Protest

Any interested party may file a protest with the Agency(ies) on the basis that the Agencies have failed to comply with applicable Federal or State Regulations or with the Agencies' Procurement Process. The protest must be filed in accordance with the timing requirements set forth in subsection D. "Types of Protests and Timing" of this section, and must include: **The name, phone number, e-mail and address of the protestor.**

The proposal and proposed contract number of the proposal.

A statement of grounds for the protest, a statement as to what relief is requested, and the Federal or State law or Agencies' Process alleged to have been violated. This statement should be accompanied by any supporting documentation the protesting party desires the Authority to consider in making its decision. Protest(s) should be submitted to:

Director of Procurement and Business Diversity
430 Myatt Drive
Nashville, TN 37115
Denise.Richardson@nashville.gov

D. Types of Protests and Timing

The requirement for timely filing of protest with the Agencies will depend upon the type of protests involved. The Agencies will consider the following three types of protest by interested parties:

1. Protest regarding Proposal

Any protest regarding the proposal must be filed no later than five (5) business days before proposal due date. Any protest filed after that date regarding the proposal will not be considered by the Agencies.

This type of protest would include any claim that the proposal contained exclusionary or discriminatory specification, any challenge to the basis of award, or any claim that the proposal documents or the proposal process violated applicable Federal or State law, or that the Agencies failed to follow its procurement process in the proposal solicitation.

2. Protests regarding Requirements and Responsiveness

Any protest regarding the requirements and responsiveness of the proposal by the Agencies must be filed with the Agencies no later than five (5) business days after receipt of letter of notification of non-responsiveness. Any protest filed after such date regarding the requirements and responsiveness will not be considered by the Agencies.

This type of protest would include any challenge to determinations by the Authority of the responsiveness of or the responsibility of a proposer, or any claim that the requirements and responsiveness of the proposal violated Federal or State law or the Agencies' procurement process.

3. Protest Regarding Receipt of Non-Award Notification

Any protest regarding the award of the contract must be filed no later than five (5) business days after receipt of Non-Award Notification. Any protest regarding the award of the contract filed after that date will not be considered by the Agencies.

This type of protest will only be entertained by the Agencies if the protestor is able to demonstrate that the party awarded the contract fraudulently represented itself as a responsible proposer or that the Agencies violated Federal or State regulations or its procurement process in the award of the contract.

E. Agencies Response

The Agencies will notify the protestor five business days after receipt of a protest and may, where appropriate, request additional information from the protestor. The Agencies may, at its discretion, meet with protestor to review the matters raised by the protest. The Agencies' consideration of the particular types of protests will, except as otherwise stated in subsection 2. "Decisions by Agencies" of this section E. "Agencies Response" in accordance with the following provisions:

1. Types of Protests

a. Protest regarding the proposal

Upon receipt of a timely filed protest regarding the proposal, the Agencies will postpone the opening until resolution of the protest. No additional proposals will be accepted during the period of postponement.

If the protest regarding the proposal involves a claim of unduly restrictive or exclusionary specifications, the Agencies will, in evaluation of the protest, consider both the specific need of the Agencies for the feature or item challenged and any effects on competition of including the specifications regarding that feature or item. If the Agencies determine that such feature or item was included in the specification in order to meet justified and valid transit needs of the Agencies and was not unduly restrictive of competition or designed to exclude a particular competitor, then the Agencies will have grounds to deny the protest.

b. Protest regarding requirement and responsiveness

Upon receipt of a timely filed protest regarding the requirements responsiveness, the Agencies will suspend its evaluation of all proposals submitted until resolution of the protest, if the Agencies determines that the protestor has established that there are reasonable doubts regarding the responsiveness of a proposal or the responsibility of a proposer or regarding the Agencies' compliance with Federal or State Regulations or its procurement process.

c. Protests after non-award notification

Upon receipt of a timely filed protest regarding the non-award notification, the Agencies will not proceed with contract, if necessary, until the resolution of the protest if the Agencies determines that the protestor has established a prima facie case that the contract was awarded fraudulently or in violation of that Federal or State Regulations or the Agencies' procurement process.

2. Decisions by Agencies

As indicated above, in most instances the Agencies will suspend the procurement process upon receipt of a bona fide protest. However, the Agencies reserve the right, notwithstanding the pendency of a protest, to proceed with the appropriate action in the procurement process or under the contract in the following cases:

- A. where the item to be procured is urgently required.
- B. where the Agencies determine that the protest was vexatious or frivolous; and
- C. where delivery or performance will be unduly delayed or other undue harm will occur, by failure to make the award promptly.

After reviewing the protest submitted under this section, the Agencies will issue a written decision of the basis of the information provided by the protestor, the results of any meetings with protestor, and the Agencies' own investigation. If the protest is upheld, the Agencies will take appropriate action to correct the procurement process and protect the rights of the protestor, revised evaluation of Proposal or Agencies' determinations, or termination of the contract. If the protest is denied, the Agencies will lift any suspension imposed and proceed with the procurement process. If the protestor is not satisfied with the response of the Director, the protestor may appeal in writing to the Chief Executive Officer or the CEO's designee ("CEO"), within five (5) business days from the date of the Director's response. The CEO, in his or her sole discretion, shall determine if the protest has been given fair and reasonable consideration by the Director, or if additional information is needed or consideration is warranted. The CEO will provide a response within ten (10) business days after receipt of the appeal. The CEO's decision is final and no further action on the protest shall be taken by Nashville MTA. By written notice to all parties, the Director or CEO may extend the time provided for each step of the protest procedures, extend the date of notice of award, or postpone the award of a contract if deemed appropriate for protest resolution.

F. FTA Protest Procedure

Note – WeGo will notify FTA regional office when it receives a third-party contract protest on a contract with substantial FTA funds (projects over \$500,000), and keep FTA informed about the status of the protest. A protestor must exhaust all administrative remedies with the Agencies before pursuing a protest with FTA. An appeal to FTA must be on the grounds of a federal concern. Protesters must raise any federal matters arising out of the agency's award of a third-party contract within five (5) business days of the agency's final decision of the bid protest as set forth in the Best Business Practice Manual section 4.9.

18. ADDITIONAL SERVICES REQUEST

The Agencies reserve the right to request Additional Services under this proposal that may not be specifically identified within. Proposers are encouraged to identify and provide supporting statements for any other area(s) of services not listed in the Scope that may be related to Additional Services and the work of the Agencies.

19. PROPOSED CONTRACT ALTERATIONS

No alterations or variables in the terms of the proposal and /or of the proposed contract shall be valid or binding upon the Agencies unless authorized in writing by the Agencies.

20. ASSIGNABILITY

Any public Agency (i.e., city, district, public Agency, municipality, and other political subdivision or any FTA-funded entity) shall have the option of participating in any award made as a result of a proposal and/or contract at the same prices, terms and conditions. The Agency reserves the right to assign any or all portions of Services awarded under this proposal and/or contract. This assignment, should it occur, shall be agreed to by the Agency and the proposer. Once assigned, each Agency will enter into its own contract and be solely responsible to the proposer for obligations to the service assigned. The Agency's right of assignment will remain in force over the contract period or until completion of the contract including options, whichever occurs first. The Agency shall incur no financial responsibility in connection with contracts issued by another public Agency. The public Agency shall accept sole responsibility for placing service and payments to the proposer.

21. PUBLICATION AND MEDIA RESTRICTIONS

The Contractor shall not publish or reproduce subject data in whole or in part, or in any manner or form, without the advance written consent of the Agencies, unless the Agencies have released or approved the release of that data to the public.

22. GRATUITIES AND KICKBACKS

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request,

influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any proposal or proposal therefore. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the Agency contracts.

4.3 STANDARD CLAUSES

To the extent not inconsistent with foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

The following requirements are not federal clauses.

1. FULL AND OPEN COMPETITION

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

2. PROHIBITION AGAINST EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

3. INELIGIBLE CONTRACTORS AND SUBCONTRACTORS

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

4. COMPLIANCE WITH FEDERAL REGULATIONS

Any contract entered pursuant to this Proposal shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master

Agreement between the recipient and FTA, as 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.

5. REAL PROPERTY

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 29 CFR 18.31, 49 CFR 24 Subpart B, FTA Circular 5010.1D, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

6. ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

7. ENVIRONMENTAL JUSTICE

The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

8. ENVIRONMENTAL PROTECTIONS

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter

53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

9. GEOGRAPHIC INFORMATION AND RELATED SPATIAL DATA

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

10. FEDERAL SINGLE AUDIT REQUIREMENTS FOR STATE ADMINISTERED FEDERALLY AID FUNDED PROJECTS ONLY

Non Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, Audits of States, Local Governments, and Non-Profit Organizations. Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

11. CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) IDENTIFICATION NUMBER

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

12. CFDA NUMBER FOR THE FEDERAL TRANSPORTATION ADMINISTRATION

A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

13. NOTIFICATION OF FEDERAL PARTICIPATION

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause the Agencies to be in violation of the FTA terms and conditions.

END SECTION IV

V. CONTRACT TERMS AND CONDITIONS (PROPOSED)

NOTE: This is a Proposed Contract for Nashville MTA. The same terms and conditions will apply to DTO. PROPOSERS ARE ADVISED THAT IF AWARDED A CONTRACT, THEY WILL SIGN SEPARATE CONTRACTS WITH MTA AND DTO. The Agency reserves the right to make changes to this Proposed Contract prior to execution.

CONTRACT NO 2023109
BETWEEN
NASHVILLE METROPOLITAN TRANSIT AUTHORITY
AND
[CONTRACTOR NAME]
FOR
THIRD PARTY ADMINISTRATOR SERVICES

This Contract No. 2023109 (hereinafter referred to as “**Contract**”) is entered into as of the _____ day of 20____, by and between Nashville Metropolitan Transit Authority (hereinafter referred to as “**Nashville MTA**” or “**the Agency**”), having its principal office located at 430 Myatt Drive, Nashville, TN 37115, and _____ (hereinafter referred to as “**Contractor**”), having its principal office located at _____.

CONTRACT

The following documents constitute this Contract, and the order of precedence in resolving any dispute that may arise or conflicting provisions:

1. Any properly executed amendment to this Contract (most recent with first priority),
2. Contract No. 2023109
3. Response to Request for Additional Information Issued _____
4. Request for Proposals No. 2023109 (the “**RFP**”), including all addenda
5. Contractor’s Proposal dated _____ (collectively, the “**Contract**”)

1. Duties and Responsibilities of Contractor

1.1. Contractor shall provide Third Party Administrator services, including but not limited to the services outlined in the RFP and Scope of Services attached as **Exhibit C** hereto (collectively all such services referred to as the “**Services**”). The Services shall be provided as requested by the Agency and as set forth in this Contract, and to the extent not inconsistent with the terms herein, according to the methods set forth in the RFP.

1.2. Nashville MTA may purchase additional services under this Contract (“**Additional Services**”). The Additional Services shall be agreed upon in writing with a properly executed amendment between the parties. Additional Services shall be invoiced at the rates as stated in the written amendment as agreed to by both parties. The rights and obligations of the parties in this Contract shall pertain and apply to “Additional Services,” unless stated otherwise in writing.

2. Term

2.1. This Contract shall commence on the ____ day of _____, 2023. The initial term of this Contract shall be for three (3) years, with an option to extend the term for an additional two (2) years at Nashville MTA’s sole discretion. The term of this Contract shall also apply during any Correction Period.

2.2. This Contract may be extended by all the required parties with a properly executed amendment to this Contract.

3. Compensation/Invoices

3.1. For its Services, Contractor is entitled to receive a not to exceed amount indicated below, as agreed upon both parties and as shown in **Exhibit D**, Accepted Price Proposal.

3.2. Contractor shall submit travel costs based on the Tennessee State Travel Policy — https://www.tn.gov/content/dam/tn/finance/documents/fa_policies/policy8.pdf. In order to be compensated for travel costs, Contractor MUST submit all receipts with the invoice on which the travel is billed. If supporting receipts are not submitted with the invoice, Contractor will not be paid for the travel expense.

3.3. There shall be no other charges or fees for the performance of this Contract unless otherwise agreed to by both parties in writing. Nashville MTA reserves the right to reject the request for payment of any cost item that was not submitted with the cost proposal or that was not expressly approved by Nashville MTA in advance of the cost being incurred. Nashville MTA shall make reasonable efforts to make payments within thirty (30) days of receipt of approved invoice.

3.4. Contractor shall submit invoices to: MTA.AccountsPayable@nashville.gov
With a copy to: _____

3.5. Nashville MTA uses an online reporting system: <https://wegostransit.dbesystem.com> to report contract payments to prime and subcontractors. Each month, Contractor shall report payments received from the Agency as well as payments made to all subcontractors.

3.6 Contractor is required to make payment to subcontractors within fifteen (15) days or receipt of payment from Nashville MTA.

4. Acceptance

4.1. If the Services are not acceptable to Nashville MTA according to the Contract, then Nashville MTA shall submit a letter of non-acceptance to Contractor detailing the deficiencies within sixty (60) of delivery to Nashville MTA of the deficient Services. Acceptance of delivery of the Services shall not release Contractor from liability for Contractor's other obligations and duties as provided herein.

4.2. Approval or acceptance by Nashville MTA of any of Contractor's Services under this Contract shall not constitute, or be deemed, a release of the responsibility and liability of Contractor, its employees, associates, agents or subcontractors for the exercise of skill and diligence necessary to fulfill Contractor's responsibilities under this Contract. Nor shall Nashville MTA's approval or acceptance be deemed to be the assumption of responsibility by Nashville MTA for any defect or error in the Services of Contractor, its employees, associates, agents, or subcontractors.

5. Taxes

5.1. Nashville MTA shall not be responsible for any taxes that are imposed on Contractor. Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to Nashville MTA.

6. RESERVED

7. Standard of Care and Correction Period

7.1. Contractor warrants that the Services provided by Contractor reflect high professional and industry standards, procedures and performances. Contractor warrants the preparation of materials, the selection of personnel, the fitness and operation of its recommendations, and the performance of the Services shall conform to a high standard of performance in the profession. Contractor warrants that it will exercise diligence and due care and perform in a good and workmanlike manner all of the Services pursuant to this Contract.

7.2. Contractor shall be responsible for using due diligence to correct errors, deficiencies or unacceptable Services. Contractor shall, at no cost to Nashville MTA remedy any errors, deficiencies or any service, work or other work products found unacceptable, in Nashville MTA's sole discretion, as soon as possible, but in all cases within fifteen (15) days of Contractor's receipt of written notice of said errors, deficiencies or unacceptable Services. For the Correction Period, as defined below, Contractor's obligation shall be to replace, resolve or correct, at Contractor's own expense, any defects in the Services.

7.3. Correction Period is defined as a period of One (1) year beginning on the date Nashville MTA accepts the Services, until Contractor has remedied all problems of which Contractor was notified prior to expiration of the correction period ("**Correction Period**").

8. Unencumbered Services

8.1. Contractor warrants that it has good title to and/or the right to sell the Services and represents that the Services delivered to Nashville MTA are free and clear of all liens, Claims or encumbrances of any kind.

8.2. Contractor shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against the Covered Entities, as defined in **Section 14**, below, to the extent that it is based on a Claim that the Services or other work products furnished contain liens, Claims, or encumbrances of any kind (each an “**Encumbrance Claim**”). The Contractor shall further indemnify and hold harmless, to the fullest extent permitted by law, and as set forth in **Section 14**, the Covered Entities against any award of damages and costs made against the Covered Entities or in any settlement agreement of any and all Encumbrance Claims authorized in writing by Nashville MTA.

8.3. In the event use of the Services are restricted or interfered with as a result of any such encumbrance, Contractor shall, at its cost, procure non-encumbered Services for Nashville MTA which are equal substitutes, in Nashville MTA’s discretion, for the Services in all material respects, or obtain for Nashville MTA the right to use the Services without encumbrances, or refund to Nashville MTA all monies paid by Nashville MTA for such Services. Nothing in this **Section 8** shall preclude Nashville MTA from exercising any rights or remedies as provided elsewhere in this Contract.

9. Copyright, Trademark, Service Mark, or Patent Infringement

9.1. Contractor shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against the Covered Entities to the extent that it is based on a Claim that the Services or other work products furnished infringe a copyright, trademark, service mark, or patent. The Contractor shall further indemnify and hold harmless to the fullest extent permitted by law, and as set forth in **Section 14**, the Covered Entities against any award of damages and costs made against the Covered Entities or in any settlement agreement of a Claim authorized in writing by Nashville MTA.

9.2. If the Services or other work products furnished under this Contract are likely to, or do become, the subject of such a Claim of infringement, then without diminishing Contractor’s obligation to satisfy the award, Contractor may at its option and expense:

9.2.1. Procure for Nashville MTA the right to continue using the products or Services.

9.2.2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to Nashville MTA, so that they become non-infringing.

9.2.3. Remove the products or discontinue the services and cancel any future charges pertaining thereto.

9.2.4. Provided, however, that Contractor will not exercise option 9.2.3 until Contractor and Nashville MTA have agreed and determined that options 9.2.1 and 9.2.2 are impractical.

9.3. Contractor shall have no liability to Nashville MTA, however, if any such infringement or claim thereof is based upon or arises out of:

9.3.1. The use of the Services or other work products in combination with apparatus or devices not supplied or else approved by Contractor.

9.3.2. The use of the Services or other work products in a manner for which the Services or other work products were neither designated nor contemplated.

9.3.3 The claimed infringement in which Nashville MTA has any direct or indirect interest by license or otherwise, is separate from that granted herein.

Nothing in this **Section 9** shall preclude Nashville MTA from exercising any rights or remedies as provided elsewhere in this Contract.

10. Works for Hire and Software License

10.1. Contractor acknowledges that all Services under this Contract are “work(s) for hire” within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to Nashville MTA all rights and interests Contractor may have in the Services it prepares under this Contract, including any right to derivative use of the Services.

10.2. The term “**Software**” as used herein shall be the set of copyrighted, object code computer programs and databases licensed under this Contract and provided by Contractor at any time, and from time to time under this Contract. Further, the term Software shall include any upgrades, updates, patches, hotfixes, modules, routines, feature enhancements and supplemental or replacement Software and their associated media, printed materials, online or electronic documentation, or other features or components, distributed by or on behalf of the Contractor.

10.3. The term “**Documentation**” as used herein shall mean all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, or technical or other components, features or requirements, of the Software. Contractor shall provide Nashville MTA with complete and accurate Documentation for all Software prior to or concurrently with its delivery, and as necessary from time to time.

10.4. Contractor warrants that the Software and Documentation, and Nashville MTA’s use thereof, are and will remain free and clear of all encumbrances, liens and security interests of any kind.

10.5. All Software and related materials developed by Contractor in performance of this Contract for Nashville MTA shall be the sole property of Nashville MTA. Further, Nashville MTA shall own all any and all rights to any information Nashville MTA generates, inputs, prints, copies, or downloads from the Software. Notwithstanding the foregoing, Nashville MTA agrees not to reverse engineer, disassemble, decompile, decode or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part, except as and only to the extent: (i) this restriction is prohibited by applicable law; (ii) such action is taken for purposes of ensuring or assessing interoperability or otherwise qualifies as a “fair use” under US Copyright Act or other applicable law or; or (iii) these acts are permitted under the applicable Software license.

10.6. Nashville MTA agrees that the Software will be displayed or read into or used or distributed on computers required to render services under this Contract. Nashville MTA agrees to make no more than two (2) copies of the Software for archival or backup purposes only, all of which copies (together with the original) shall be kept in the possession or direct control of Nashville MTA.

10.7. Contractor hereby grants to Nashville MTA a nonexclusive, perpetual, irrevocable license to the Software for the purposes set out in this Contract.

10.8. Contractor, if requested by Nashville MTA, shall execute all necessary documents to enable Nashville MTA to protect Nashville MTA’s rights under this **Section 10**.

11. Termination

11.1. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Contract or if it should violate any of the terms of this Contract (“**Default**”), Nashville MTA shall have the right to terminate this Contract provided Contractor fails to cure such Default within thirty (30) days of Nashville MTA’s written notice of Default to Contractor. Such termination shall not relieve Contractor of any liability for damages sustained by virtue of any Default by Contractor.

11.2. Should funding for this Contract be discontinued, Nashville MTA shall have the right to terminate this Contract effective immediately, without penalty, upon written notice to Contractor.

11.3. Nashville MTA may terminate this Contract at any time, without penalty, for its convenience or its best interest upon fifteen (15) days’ written notice to Contractor.

11.4. In the event of a termination under **Section 11.2. or 11.3.**, Contractor shall be entitled to compensation for satisfactory, authorized service completed and accepted as of the termination date, but in no event shall MTA be liable to Contractor for compensation for any Service which has not been rendered.

12. Maintenance of Records and Nashville MTA Property

12.1. The Contractor, its subcontractors, and suppliers, shall maintain, accurate and complete financial and employment records of its activities, sufficient to properly reflect all costs claimed to have been incurred or anticipated to be incurred in performing the contract, or relating to negotiating, pricing, or performing a contract change. Such records shall be subject no more than once in any twelve-month period to audits by the Nashville MTA and any auditor appointed by the Nashville MTA or other authorized agencies acting as agents of the Nashville MTA to verify compliance with all contract requirements. Contractor shall maintain documentation for all charges against Nashville MTA. The complete financial and employment records and other documents of Contractor, insofar as they relate to the Services, the Additional Services, or the services performed or money received under the Contract, shall be maintained for a minimum period of three (3) full years from the date of final payment or the date which all pending matters are closed, whichever is later. The records shall be maintained in accordance with generally accepted accounting principles.

12.2. Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by Nashville MTA or their duly appointed representatives. Accordingly, notwithstanding anything in **Section 12.2** to the contrary, Nashville MTA maintains the right at any time to request copies of records as may be required by law, regulation or MTA's reasonable business needs.

12.3. Any Nashville MTA property, including but not limited to, books, records and equipment that is in Contractor's possession shall be maintained by Contractor in good condition and repair, and shall be returned to the Nashville MTA by Contractor upon termination of the Contract. All goods, documents, records, work and other work product and property produced by Contractor during the performance of this Contract are deemed to be Nashville MTA property. Upon completion or termination of this Contract, Contractor shall promptly deliver to Nashville MTA all records, notes, data, memorandum, models, and any other material of any nature that are within Contractor's possession or control and that are Nashville MTA property or relate to Nashville MTA or its business.

12.4. Nashville MTA shall retain existing ownership and all proprietary rights to its information and data. Confidential information and data may need to be disclosed to Contractor for purposes necessary to Contractor providing the Services. Contractor shall treat any such data and information as strictly confidential.

12.5. Contractor represents and warrants that (1) it is knowledgeable with respect to any legal and regulatory requirements regarding any confidential information, personal information, or other data it may encounter or have access to as a result of this Contract (such laws referred to generally as "**Data Security Laws**") and (2) it will operate with industry best practices with respect to accessing, handling, processing, or in any manner dealing with similar confidential information or other information protected by Data Security Laws.

12.5.1. Data Security Laws may include, but are not limited to, laws known as HIPAA, PCI DSS, the GLB Act, FACTA, the GDPR, the California Privacy Act, and the Tennessee Identity Theft Deterrence Act of 1999 to the extent applicable to the Services and its performance under this Contractor. Contractor assumes full responsibility for adhering to the applicable Data Security Laws.

12.5.2. In the event that Contractor becomes aware of any known or suspected breach of any applicable Data Security Laws, Contractor will promptly inform Nashville MTA and promptly work to remedy such breach, including, without limitation, undertaking in cooperation with Nashville MTA to provide any notices required by any Data Security Law. To the extent that any known or suspected breach of Data Security Laws is a result of the provision of the Services by Contractor, its subcontractors, or any representative or agent of Contractor, Contractor will assume all costs arising from or relating to such known or suspected breach.

13. Independent Contractor/Subcontractors

13.1. Contractor is an independent contractor. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. It is expressly agreed and understood between the parties that Contractor and any of its subcontractors and suppliers are independent contractors to Nashville MTA and as such shall be viewed in law and equity. No vicarious liability shall be imposed upon the Covered Entities by any action of Contractor, subcontractor or supplier in the performance of this Contract. Neither Nashville MTA nor Contractor shall hold itself out in a manner contrary to the terms of this **Section 13** nor shall Nashville MTA or Contractor become liable for any representation, act, or omission of the other party contrary to the terms of this **Section 13**.

13.2. Neither Contractor nor Contractor's employees, subcontractors or agents are Nashville MTA employees. Contractor shall bear sole responsibility for payment of compensation to its employees and subcontractors. Contractor shall procure and maintain Worker's Compensation Insurance as stated in **Section 16**.

13.3. In addition to the other requirements of Contractor set forth herein regarding subcontractors, Contractor shall not subcontract any of its rights or responsibilities in this Contract without the prior written approval of the Nashville MTA. Contractor shall remain fully responsible for the Services of the subcontractor and for supervising the performance of the Services by the subcontractor. Nashville MTA is not subject to any liability of any kind with respect to any subcontractor nor do subcontractors obtain any rights against Nashville MTA under this Contract.

13.4. Contractor and its subcontractors shall be appropriately licensed in the State of Tennessee to conduct the Services required by this Contract. Contractor and subcontractors must maintain current Central Contractor Registration ("**CCR**"), Data Universal Numbering Systems ("**DUNS**") number, System for Award Management ("**SAM**"), or registration in other substantially similar registration databases. Contractor must submit to Nashville MTA all

Tennessee certification of any Disadvantage Business Enterprises (“**DBEs**”) participating in the Project. Contractor shall hire reliable and dependable subcontractors. Contractor and its subcontractors found guilty of unethical, irresponsible business practices according to governmental authority will be suspended and debarred from conducting future business with Nashville MTA.

13.5. Subcontractors, if approved in writing, shall be made and are subject to the applicable terms of this Contract in their contractual agreements with the Contractor. Contractor shall include in its subcontracts a similar indemnification provision as set forth in **Section 14** running from each subcontractor directly to the Covered Entities.

14. Indemnity and Contractor Responsibility

14.1. Contractor shall indemnify, defend and hold harmless, to the fullest extent permitted by law, Nashville MTA, Davidson Transit Organization, the Metro Government of Nashville and Davidson County, and their officers, agents, employees and volunteers (“**Covered Entities**”) from:

14.1.1. Any claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, and reasonable attorneys’ fees, including, but not limited to third party claims for injury to or death of any person or damage to property (“**Claims**”), arising from the Services under this Contract, and/or from the alleged negligent or intentional acts or omissions of Contractor, its officers, employees and/or agents, including its sub or independent contractors (including third parties), in connection with the performance of this Contract, and,

14.1.2. Any Claims arising from any alleged failure of Contractor, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

14.2. The indemnity and release in this **Section 14** applies regardless of whether said Claims are covered, in whole or in part, by insurance and regardless of the negligence, if any, of the Covered Entities.

14.3. Contractor assumes full responsibility for the Services to be performed hereunder and hereby releases, relinquishes, and discharges the Covered Entities from all Claims of every kind and character, including the cost of defense thereof, for any alleged injury to or death of any person (including third parties) and damage to property that are caused by or alleged to be caused by, arising out of, or in connection with Contractor’s Services, Additional Services and work to be performed hereunder. This release shall apply regardless of whether said Claims are covered, in whole or in part, by insurance and regardless of the negligence, if any, of the Covered Entities.

14.4. In the event of any Claim against the Covered Entities, the Covered Entities may choose counsel, in the Covered Entities’ sole and absolute discretion, to represent the Covered Entities, and Contractor shall promptly reimburse the Covered Entities for all costs actually

incurred, including, but not limited to, all expenses of litigation, court costs, and reasonable attorneys' fees. The Covered Entities shall be consulted prior to any settlement and approve such settlement in writing.

14.5. The Covered Entities shall not, under any circumstances, indemnify, defend, or hold harmless Contractor from any Claim.

15. Nashville MTA Owned Data

15.1. Nashville MTA will own and retain rights to all of its data. Some data will need to be disclosed to Contractor for purposes necessary for design and implementation. Contractor will treat Nashville MTA information as strictly confidential.

16. Insurance

16.1. During the Term of this Contract, Contractor shall, at its sole expense, obtain and maintain in full force and effect for the duration of this Contract and any extension hereof the types and amounts of insurance identified below by a **check mark**.

a) General Liability Insurance in the amount not less than one million dollars (\$1,000,000) combined single limit each occurrence for bodily injury and property damage.

b) Professional liability insurance, errors & omissions insurance, or malpractice insurance, whichever may be customary in the professional field, in the minimum amount of one million dollars (\$1,000,000.00) per claim/annual aggregate. Such coverage must be maintained for a period of three (3) years following termination of this Contract or final acceptance by Nashville MTA of the Services, whichever is later. This provision shall expressly survive the termination of the Services or the Contract.

c) Automobile Liability Insurance in the amount not less than a combined single limit of one million dollars (\$1,000,000) covering Contractor's owned, non-owned, leased or rented vehicles.

d) Worker's Compensation Insurance with statutory limits required by the State of Tennessee or other applicable laws and employer's liability insurance with limits of no less than one hundred thousand (\$100,000) dollars, as required by the laws of Tennessee. (Not required for companies with fewer than five (5) employees).

e) Umbrella/Excess Liability shall be provided by Contractor based on contract value amount. The Umbrella/Excess Liability insurance limits shall be at least \$1,000,000.

16.2. Such insurance shall contain or be endorsed to contain a provision that includes Covered Entities as additional insureds and loss payees with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment

furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the Covered Entities.

16.3. For any Claims related to this Contract, Contractor's insurance coverage shall be primary insurance as respect to the Covered Entities. Any insurance or self-insurance programs covering the Covered Entities shall be excess of Contractor's insurance and shall not contribute with it.

16.4. Prior to commencement of the Services, Contractor shall furnish Nashville MTA with original certificates and amendatory endorsements effecting coverage required by this **Section 16** and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on thirty (30) days' prior written notice to Nashville MTA. Contractor may provide certified copies of endorsements and policies if requested by Nashville MTA in lieu of or in addition to certificates of insurance.

16.5. Contractor shall place such insurance with an insurer licensed to do business in Tennessee and having AM. Best Company ratings of no less than A-. Modification of this standard may be considered upon written appeal to the Procurement Manager. All subcontractors are required to maintain during the Term of this Contract Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/Employers Liability insurance (unless subcontractor's employees are covered by Contractor's insurance) in the same manner as specified for Contractor. Contractor shall file subcontractor's certificates of insurance as required by Nashville MTA.

16.6. Contractor shall disclose any deductibles and/or self-insured retentions greater than ten thousand dollars (\$10,000) and obtain Nashville MTA's written approval of such deductibles and/or self-insured retentions prior to the commencement of the Services. Additionally, if Contractor has or obtains primary and excess policies, Contractor shall not have any gap between the limits of the primary policy and the deductible features of the excess policies.

16.7. Regarding Automotive Liability Insurance including vehicles owned, hired, and non-owned, said Contractor's insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the Covered Entities as additional insureds with respect to Claims and liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor.

16.8. Contractor shall maintain workers' compensation insurance, if applicable, with statutory limits as required by the State of Tennessee or other applicable laws and liability insurance. Contractor shall require each of its subcontractors to provide workers' compensation insurance for all of the latter's employees to be engaged in such work unless employees are covered by Contractor's workers' compensation insurance coverage.

16.9. Contractor shall maintain such insurance from the time the Services commence until completed. Failure to maintain, renew coverage or provide evidence of renewal as required by Nashville MTA may be treated by Nashville MTA as a material breach and Default under this

Contract. Contractor must replace certificates, policies, and/or endorsements for any such insurance expiring prior to completion of Services.

17. Waiver

17.1. No failure to exercise, and no delay in exercising, on the part of either party, any privilege, any power or any right hereunder will operate as a waiver thereof, nor will any single or partial exercise of any privilege, right or power hereunder preclude further exercise of any other privilege, right or power hereunder.

18. Employment and Nondiscrimination

18.1. Contractor shall not discriminate on the basis of age, race, sex, color, national origin, disability or any other classification protected by federal or Tennessee State Constitutional or statutory law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

18.2. Contractor shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this Contract.

18.3. Violation of these Contract provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) days, to the satisfaction of Nashville MTA.

19. Ethical Standards

19.1. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand accept or agree to accept from any other person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract, subcontract, solicitation or proposal therefore.

19.2. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order.

19.3. Breach of the provisions of this **Section 19** is, in addition to a Default of this Contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Nashville MTA contracts.

20. Assignment-Consent Required

20.1. The provisions of this Contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the compensation due to Contractor under this Contract, neither this Contract nor any of the rights and obligations of Contractor hereunder shall be assigned or transferred in whole or in part without the prior written consent of Nashville MTA. Any such assignment of transfer shall not release Contractor from its obligations hereunder.

20.2. Any public agency (i.e., city, district, public agency, municipality, and other political subdivision or any FTA-funded entity) shall have the option of participating in this Contract at the same prices, terms and conditions. Nashville MTA reserves the right to assign any or all portions of the Services awarded under this Contract. This assignment, should it occur, shall be set forth in writing by Nashville MTA and Contractor. Once assigned, each agency will enter into its own agreement and be solely responsible to Contractor for obligations for the Services assigned. Nashville MTA's right of assignment will remain in force over the Term. Nashville MTA shall incur no financial responsibility in connection with agreements issued by another public agency. The public agency shall accept sole responsibility for placing service and payments to the Contractor.

21. Remedies

21.1. In no event shall Nashville MTA be liable for special, incidental, indirect, or consequential damages, including, but not limited to, lost profits arising from the performance of this Contract, whether such damages are based in contract, tort, or any other legal theory.

21.2. In the event of breach or Default of the Contract by Contractor, in addition to any other remedies set forth herein, Contractor shall be liable to Nashville MTA for damages for the breach or Default thereof, including the costs and reasonable attorneys' fees for the enforcement thereof. The remedies set forth in this Contract shall be cumulative, and no one remedy shall be deemed to be exclusive of any other or of any other remedy in law or equity, and the failure or delay of Nashville MTA to exercise a remedy at any time shall not operate as a waiver of the right to exercise a remedy for the same or subsequent breach or Default at any time thereafter.

22. Governing Law and Venue

22.1. The validity, construction and effect of this Contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that Contractor may provide.

22.2. The parties consent that any action between the parties arising from this Contract shall be maintained in the state trial courts of Davidson County in the State of Tennessee.

23. Entire Agreement

23.1. This Contract states the entire contract between the parties. No alteration, modification, release, or waiver of this Contract or any of the provisions hereof shall be effective unless in writing, executed by the parties hereto.

23.2. Notwithstanding the foregoing, Contractor agrees that this Contract is subject to modification by Nashville MTA to the extent necessary to comply with federal, state or local regulations, which may govern this Contract. Nashville MTA shall provide written notice to Contractor of any such modification.

24. Compliance with Federal Regulations

24.1. All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F and the FTA contract clauses in the RFP are incorporated by reference. Unless otherwise modified in this Contract, FTA mandated terms shall 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 any Nashville MTA request that would cause the parties to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between Nashville MTA and FTA, as may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a Default of this Contract.

25. Export

25.1. Contractor represents and warrants that the Services and documentation related thereto shall not be disclosed to any foreign national, firm, or country, nor shall be exported from the United States without first complying with all the requirements of the International Traffic in Arms Regulations and the Export Administration Act, including the requirement for obtaining an export license, if applicable. Contractor shall fully indemnify Nashville MTA for any breach of this representation.

26. Force Majeure

26.1. No party shall have any liability to the other hereunder by reason of any delay of failure to perform any obligation of this Contract if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

27. Severability

27.1. If any provision of this Contract is held invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted and the remainder of this Contract shall remain in full force and effect.

28. Notices

28.1. Any notice or other communication to be made pursuant to this Contract shall be made in writing by United States certified or registered mail, by messenger service or by a nationally recognized overnight courier, and shall be effective (i) upon receipt, if delivered in person, (ii) five (5) business days after deposit into the United States mail, if sent by certified or registered mail, and (iii) at 1:00pm on the following business day, if sent by overnight courier. Notice hereunder shall likewise be effective when actually received by either party. In each case, such notice or other communication shall be made to the address shown below. Either party shall have the right, by written notice to the other party, to change its address for such notice.

Nashville MTA: Nashville Metropolitan Transit Authority
430 Myatt Drive
Nashville, TN 37115
Attn: Procurement Department
Denise.Richardson@nashville.gov

Contractor: [Contractor’s address here]
Attn: _____

29. Counterparts

29.1. This Contract may be executed in one or more identical counterparts, each of which shall be deemed to be an original for all purposes, and all of which taken together shall constitute a single instrument.

IN WITNESS WHEREOF, NASHVILLE MTA AND CONTRACTOR HAVE EXECUTED THIS CONTRACT AS OF THE DATE FIRST ABOVE WRITTEN.

Nashville Metropolitan Transit Authority

Contractor Name

Stephen G. Bland, Chief Executive Officer

Authorized Signatory

Date: _____

Title: _____

Date: _____

Exhibit A to Contract

Federal Transit Administration Clauses

1. Access to Records and Reports

- a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
- b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

2. Americans with Disabilities Act (ADA)

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

3. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency.

4. Civil Rights Laws and Regulations

The following Federal Civil Rights laws and regulations apply to all contracts.

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
 - a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals aged 40 and over on the basis of age.
4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

5. Clean Air Act and Federal Water Pollution Control Act

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

6. Conformance with ITS National Architecture

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

7. Debarment and Suspension

a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and

subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Disadvantaged Business Enterprise (DBE)

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the 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 the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

9. DHS Seal, Logo, and Flags

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre-approval.

10. Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

11. Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

12. Federal Changes

49 CFR Part 18 Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, 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.

13. Fly America

- a) Definitions. As used in this clause—
 - 1) “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
 - 2) “United States” means the 50 States, the District of Columbia, and outlying areas.
 - 3) “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:
Statement of Unavailability of U.S. – Flag Air Carriers
International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

- e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

14. Incorporation of Federal Transit Administration (FTA) Terms

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

15. No Government Obligation to Third Parties

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

16. Notification to FTA

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to

subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

17. Program Fraud and False or Fraudulent Statements and Related Acts

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

18. Prompt Payment

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

19. Safe Operation of Motor Vehicles

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

20. Simplified Acquisition Threshold

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes

requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

20. Seismic Safety

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

21. Termination

Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] 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 Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

22. Violation and Breach of Contract

Rights and Remedies of the Agency

The Agency shall have the following rights in the event that the Agency deems the Contractor guilty of a breach of any term under the Contract.

- a. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
- b. The right to cancel this Contract as to any or all of the work yet to be performed;
- c. The right to specific performance, an injunction or any other appropriate equitable remedy; and
- d. The right to money damages.

For purposes of this Contract, breach shall include.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Agency, the Contractor expressly agrees that no default, act or omission of the Agency shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Agency directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the Agency will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the Agency takes action contemplated herein, the Agency will provide the Contractor with sixty (60) days written notice that the Agency considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by an authorized representative of Agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Agency's authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Agency's authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Agency acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Agency's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by Agency, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it 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 or damage.

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

Rights and Remedies

The duties and obligations imposed by the Contract documents 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 the Agency 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.

Exhibit B to Contract

Tennessee State Contract Clauses

Conflicts of Interest.

The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract

Lobbying.

The Grantee certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352

Nondiscrimination.

The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Grantee shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

Public Accountability.

If the Grantee is subject to Tenn. Code Ann. § 8-4-401 et seq., or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.

Public Notice.

All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee, Department of Transportation." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.

Records.

The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system. Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

Environmental Tobacco Smoke.

Pursuant to the provisions of the federal “Pro-Children Act of 1994” and the “Children’s Act for Clean Indoor Air of 1995,” Tenn Code Ann. §§39-17-1601 through 1606, the Grantee shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Grantee shall post “no smoking” signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Grant Contract.

Exhibits To Be Added to Final Contract for Execution

Exhibit C - Scope of Services

Exhibit D –Contractor’s Accepted Price Proposal