

Request for Qualifications (RFQ) 2023136

FOR

On-Call Contractor Sidewalk and Bus Platform Construction

Date Issued: November 2, 2023

Proposal Due: December 5, 2023 by 1:00 PM

Facilitator:

Matt Taylor

Procurement Administrator

Matthew.Taylor@Nashville.gov | (615) 862-5665

WeGotransit.com | 615-862-5950

A service of Nashville MTA



REQUEST FOR QUALIFICATIONS

WeGo Public Transit
Main Office
430 Myatt Drive
Nashville, TN 37115

**SUBMISSIONS MUST BE RECEIVED
PRIOR TO 1:00 PM CT.
December 5, 2023

RFQ NUMBER
2023136**

INSTRUCTIONS:

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

Nashville Metropolitan Transit Authority (Nashville MTA), doing business as WeGo Public Transit, (hereafter may be referred to as the “Agency,” the “Authority,” “WeGo Public Transit,” or “WeGo”) is requesting Statements of Qualifications to provide on-call sidewalk/bus platform contractor to build sidewalks and platforms for the Transit Improvement Project and the State of Good Repair transit improvement projects. See Section 3.0 – Scope of Work – for background information about the On-Call Contractor for Sidewalk Bus Platform Construction and for the full scope of services to be provided.

This Request for Qualifications (RFQ) is set out in the following format:

| | |
|-------------|---|
| SECTION I | Introduction |
| SECTION II | Instructions to Proposers |
| SECTION III | Scope of Work, Proposal Format & General Terms and Conditions |
| SECTION IV | Clauses and Forms |
| SECTION V | Contract Terms and Conditions (Proposed) |

RESPONSE SUBMISSION DEADLINE

Submissions will be accepted at the Agency’s office located at 430 Myatt Drive, Nashville, TN 37115 by **1:00 PM Central Time (CT), December 5, 2023**. Submissions received after this date and time will not be accepted. Submissions are not opened with regular mail.

QUESTIONS/CLARIFICATION DEADLINE

All questions, requests for clarifications, and other inquiries related to this RFQ must be received by **Matt Taylor**, Procurement Project Administrator, no later than **1:00 PM CT, November 15, 2023**, via e-mail at Matthew.Taylor@Nashville.gov.

The Procurement Department will not host a Pre-Bid meeting for this solicitation.

ADDENDA REQUEST

Proposers are not to contact other Agency personnel with any questions or clarification concerns in reference to this RFQ. The Procurement Department will provide all official communication concerning this RFQ. The Addenda request **MUST** be submitted by **1:00 PM CT, Wednesday, November 15, 2023**, in order to receive direct copies or notices of addenda.

I HAVE READ AND UNDERSTOOD THIS REQUEST FOR QUALIFICATIONS (RFQ) and do herein request copies or notices of addenda. The information requested below must be received no later than **1:00 PM CT, Wednesday, November 15, 2023**, via e-mail at **Matthew.Taylor@Nashville.gov**.

Company Name

Phone Number

Fax Number

Address

Point of Contact

Email:

| | Page Number |
|---|--------------------|
| Notice to Proposers | 2 |
| Procuring Agency and Procurement Project Administrator | 2 |
| Addenda Request | 3 |

TABLE OF CONTENTS

| | Page Numbers |
|--|---------------------|
| I. INTRODUCTION | 5 – 8 |
| Background | 5 |
| Solicitation Schedule | 5 |
| Evaluation of Qualifications | 7 |
| II. INSTRUCTIONS TO PROPOSERS | 9 – 11 |
| Delivery of Qualifications Statements | 9 |
| III. SCOPE, PROPOSAL SUBMISSION FORMAT, EVALUATION CRITERIA, AND GENERAL TERMS/CONDITIONS | 12 - 36 |
| Scope of Work | 12 |
| Proposal Submission Format | 23 |
| Evaluation Criteria | 26 |
| Insurance Requirements | 27 |
| IV. CLAUSES AND FORMS | 37 - 58 |
| Forms | 40 |
| V. CONTRACT TERMS AND CONDITIONS (PROPOSED) | 59 - 87 |

I. INTRODUCTION

1.1. BACKGROUND

The mission of the Nashville Metropolitan Transit Authority, doing business as WeGo Public Transit 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.

Nashville MTA provides public transportation services, including 31 bus routes, to citizens and visitors within the Metropolitan Nashville area.

The Regional Transportation Authority of Middle Tennessee (RTA) provides commuter service on the Music City Star and a network of express bus routes. The system includes a number of park & ride lots and other supports for commuters, such as Emergency Ride Home Program. The RTA works closely with the Nashville Metropolitan Transit Authority (MTA). The Nashville MTA is contracted to manage RTA services under a fee for service agreement. The two authorities share facilities, staff, and a chief executive officer.

The Nashville MTA is responsible for operating local transit services within Metro Nashville. These services consist of bus routes and a 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.

Please visit Nashville MTA and RTA websites for additional information at www.nashvillemta.org and RTA at www.musiccitystar.org.

1.2 OVERVIEW

Qualifications will be evaluated to determine contract award. Price is excluded as an evaluation factor. Thus, a Proposer or firm shall not submit any costs information with Qualifications in the initial response to this solicitation.

The Agency intends to award an Indefinite Delivery Indefinite Quantity (IDIQ) Contract to the successful Proposer (s) who shall provide On-Call Contractor Sidewalk and Bus Platform Construction. Refer to Section 3.0 of this solicitation for an expanded description of the Scope. The Agency reserves the right to award multiple contractors with a contract.

The contract shall be for three (3) year period and renewal option for two (2) additional one (1) year terms.

1.3 SOLICITATION SCHEDULE

The following estimated timeline should be used as a working guide for planning purposes. The Agency reserves the right to adjust the schedule as required during the course of the solicitation process. The

Agency will make good faith efforts to notify potential proposers of adjustments to the schedule; However, ultimate responsibility for obtaining notice of change is that of the proposers. Any changes to the proposed schedule will be listed at: www.nashvillemta.org.

| | |
|--|--|
| Addenda Request Submittal Deadline | Wednesday, November 15, 2023, 1:00 PM Time CT |
| Question/Clarification Submittal Deadline | Wednesday, November 15, 2023, 1:00 PM Time CT |
| Qualifications Submittal Deadline | Tuesday, December 5, 2023, 1:00 PM Time CT |

All questions must be submitted in writing, via email to Matthew.Taylor@Nashville.gov. The answers to the questions will be posted on the Agency website, <https://www.wegotransit.com/doing-business/current-opportunities/>. Proposers are solely responsible for checking the website to ensure that they have the most current information regarding the RFQ. Any oral communication, explanation or instruction provided will not be binding on the Agency.

1.4 COST INCURRED BY PROPOSERS

The Agency is not liable for any costs incurred by prospective proposers in the preparation of submitting a response to this RFQ, in presentation of the response or any other activities related to responding to this solicitation.

1.5 EVALUATION OF QUALIFICATIONS

The Agency Procurement Department will examine submissions to determine compliance of legal and administrative requirements such as specified in the solicitation. The Procurement Department will only continue to review submissions meeting specified requirements and eliminate those which are determined non-responsive to the stated requirements. In the event that no submissions pass the initial review of responsiveness, the Procurement Department may cancel the solicitation and reject all responses. Proposers are to respond to all questions and or requirements contained in this solicitation. Failure to meet the requirements of this solicitation may disqualify a submission from further consideration.

The Evaluation Committee will apply the evaluation criteria set forth in the RFQ 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, request revised or best and final offers.

If interviews or presentations become necessary, the Agency will contact the top-scoring firm(s) from the evaluation to schedule a date and time. At the conclusion of the evaluation process, which will include a review of the written proposals and interviews, the Evaluation Committee will score the proposals and make recommendations of the top-ranked Proposer for submission of a price proposal, contract negotiation, and award. The Agency reserves the right to award multiple contractors with a contract.

1.6 EVALUATION SCORING MEASURES

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

- Qualifications, Experience, and References
- Understanding of the Scope of Work
- Representative Projects

Proposers are directed to Section 3.10 Evaluation Criteria, for detailed evaluation criteria and applicable points allocation.

1.7 QUALIFICATIONS ACCEPTED

Each Proposer submits its Qualifications, and if requested, its cost proposal, with the understanding that the acceptance in writing by the Agency of the offer to furnish the services requested shall constitute a contract between the Proposer and the Agency, which shall bind the Proposer to furnish the services at the rates quoted, and in accordance with conditions and requirements of the Agency. A formal contract will be signed between the Agency and the successful Proposer (s).

Each Proposer submits its proposal with the understanding that nothing in this solicitation shall be construed to require the Agency to award a contract.

With its Qualifications, the Proposer must indicate that the Proposer is prepared to enter into a contract with the Agency in accordance with the terms and conditions set forth in this solicitation, any addenda, and proposed contract. Submissions shall be valid for a minimum period of one hundred and twenty days (120) from the date of the opening of the submission.

END SECTION I

II. INSTRUCTIONS TO PROPOSERS

2.1 REQUESTS FOR CLARIFICATION

If any person submitting Qualifications is in doubt as to the true meaning of any part of the Scope of Work or other RFQ documents, or 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 **1:00 PM CT November 15, 2023**. **Only written requests will be accepted.** E-mailed questions to the Procurement Department are acceptable. 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 RFQ, if applicable, to assist the Agency in determining whether the request is or is not valid. Any corrections or changes to this RFQ will be distributed to recipients who submitted the “Addenda Request” at the address provided. **Verbal questions will not be answered, thus preventing an unfair advantage to any Proposers.**

2.2 DELIVERY OF QUALIFICATIONS STATEMENTS

Proposers must submit (1) Original, (4) Additional Copies, and (1) Electronic Copy (USB, DISK or Email) of their submission including **ALL** required forms by **1:00 PM CT, December 5, 2023** to the following address:

**Matt Taylor, Procurement Project Administrator
WeGo Public Transit
430 Myatt Drive
Nashville, TN 37115**

The sealed envelope, box, or appropriate package must be clearly marked with “**RFQ 2023136 - On-Call Contractor Sidewalk and Bus Platform Construction**” on the lower left side and “**DO NOT OPEN WITH REGULAR MAIL.**” The Agency will not consider Qualifications received after the deadline. **All submissions will be logged, by a Procurement Staff member, with the date and time of receipt.**

Proposers submitting the electronic copy of their submission via email are advised that incoming email file size is limited to 30MB. Proposers emailing their electronic submission must assure that the submission is received in full, by the proposal due date and time. The Agency has no responsibility for emailed proposals that are not received, partially received, or rejected by the email system due to file size or other limitations.

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

****NOTE: RESPONSES TO THIS SOLICITATION WILL NOT BE OPENED PUBLICLY****

2.3 QUALIFICATIONS SUBMISSIONS WITHDRAWAL

Proposers will be given permission to withdraw their submission after it has been delivered to the Agency provided the Proposer makes its request by e-mail, on the organization's letterhead, twenty-four (24) hours prior to the submission due date and time. Requests pertaining to withdrawal by telephone or e-mail must be confirmed in writing by the Proposer and must reach the office of Matt Taylor at Matthew.Taylor@Nashville.gov, not later than one (1) hour prior to the time fixed for submission of Qualifications. Submissions which are timely withdrawn shall be returned to the Proposer unopened, at Proposer's expense.

2.4 UNACCEPTABLE SUBMISSION

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

2.5 REJECTION OR ACCEPTANCE OF SUBMISSION

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

It is the intent of the Agency, if it 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 Agency shall reserve the right to accept alternates in any order which does not affect determination of the Lower Proposers.

The Agency reserves the right to cancel this RFQ in writing or postpone or extend the date and time for submitting responses at any time. The Agency reserves the right to reject any or all submissions, to waive any or all informalities or irregularities in the submissions received, to investigate the qualifications and experience of any proposer, to reject any provisions in any submission, to modify RFQ contents, to obtain new submissions, and to negotiate the requested services and contract terms with any Proposer. The Agency reserves the right to award the RFQ's requested scope of work in full, in part, and/or a single item to one or more Proposers. The Agency will determine the most responsive Proposer whose submission is most advantageous.

The submission of a response to the RFQ shall constitute an acknowledgement that the Proposer has thoroughly examined and is familiar with the RFQ, 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.

Submissions must indicate that the Proposer is prepared to enter into a contract with the Agency in accordance with the terms and conditions set forth in this RFQ, any addenda, and proposed contract.

Submissions shall be valid for a minimum period of one hundred and twenty days (120) from the proposed closing date for acceptance by the Agency.

END SECTION II

III. SCOPE OF WORK, SUBMISSION FORMAT, EVALUATION CRITERIA, AND GENERAL TERMS AND CONDITIONS

3.0 SCOPE OF WORK

3.1 Project Background Summary Information

Metropolitan Transit Authority, MTA, also known as WeGo Public Transit, has over 1620 transit stops in Davidson County, in Nashville, TN. Providing safe and accessible transit is a core value of the Agency. The Transit Stop Improvement Program, which is part of the Agency's Capital Plan for the NMotion Service Expansion and Service Improvements, guides the priorities for construction of new transit stops and improving existing transit stops to meet the growing transit service demands.

The intent of this contract is to complete construction of high quality, ADA accessible new and improved transit stops in Davidson County. This includes constructing upgrades including installing transit platforms, constructing sidewalks, walkways, paths, bikeways, and/or related infrastructure (curb ramps, curbing, gutters, retaining walls, bulb-outs, bus boarding areas, refuge islands, shared cycle tracks, detectible warning mats, delineators, bollards, asphalt patching, etc.). Construction may also include storm sewer installation including pipes, water inlets (grates), roadway striping and painting, and connection to electricity to power shelters and signs. After the transit platform and associated infrastructure is constructed, MTA staff will install shelters and amenities.

These projects will be located on public property including Metro or State rights-of-way or easements, MNPS property, Parks property, etc.

Funding for the Transit Stop Improvement Program includes local Metro funding and IMPROVE Act State funding. **No federal funding is included in this program.** In the FY 2023 – 2027 Capital Plan, funding for these projects ranges from \$2,000,000 to \$3,000,000 per year. The funding is variable and proportional to the funding level assigned by Metro and the State for this infrastructure program.

3.2 Detail of Scope and Minimum Requirements

The Contractor will designate a Project Manager (Project Manager) who will report directly to MTA's Transit Stop Improvement Program Project Manager or other designee as determined by the authorizing department. The Contractor's Project Manager will be responsible for all the coordination of project activities and the communication of project information to MTA and its representatives. The Contractor's Project Manager will also provide access to the other team members as needed or requested by MTA.

General Project Information:

Transit Stops: Typical projects will be constructing transit platforms, constructing sidewalks, walkways, paths, bikeways, and/or related infrastructure (curb ramps, curbing, gutters, retaining walls, bulb-outs, bus boarding areas, refuge islands, shared cycle tracks, detectible warning mats, delineators, bollards, asphalt patching, etc.). Construction may also include storm sewer installation including pipes, water inlets (grates), roadway striping and painting, and connection to electricity to power shelters and signs. Projects may include installation of pedestrian infrastructure including pedestrian hybrid beacons (PHB),

Rapid Rectangular Flashing Beacons (RRFB), pedestrian pushbuttons and signals for pedestrian crosswalks. Projects include improving transit stops in substandard condition or not in compliance with the current ADA Standards.

Project Packages/Distribution of Work:

MTA may elect to complete individual repairs or, will select and package projects with values up to \$1,000,000 per package. Project packages will typically contain transit stop improvements on multiple legs of an intersection or along a transit corridor. The packages may contain multiple projects, in one or more council districts, and consist of projects that are ready to go to construction. In rare instances, MTA may issue repair projects or project packages in excess of \$1,000,000 depending on the circumstances.

Contractors may be asked to provide a detailed cost proposal for each individual project within the project package as provided by MTA. The individual proposals will be evaluated both individually and as a package.

Project Tasks:

For each project or group of projects, the Contractor will be responsible for the following:

Task 1: Project Management

This task will consist of general project management, administrative, and accounting activities for the project. The Project Manager will serve as the main point of contact between MTA, any consultants and the Contractor to ensure that information is distributed to the appropriate team members and assigned staff. To meet the requirements of the schedule, regular bi-weekly meetings/teleconferences will be held between MTA, the Contractor and other associated stakeholders. Minutes of these meetings will be distributed within 48 hours of each meeting. A project schedule and payout curve will be developed for approval by MTA. Monthly invoices and progress reports complete with itemized billings (to date) for the project will be required. All charges must clearly be identified in sufficient detail to determine the unit prices that are being charged. The Project Manager will be a local point of contact committed to ensuring excellent communication between MTA, the Contractor, and associated stakeholders.

PROJECT SCHEDULE:

The Contractor will be expected to meet or exceed the schedule set forth by MTA on each project package assuming there are no major changes in scope. The Contractor will be required to submit a schedule along with a line item estimate for each project or project package. All projects assigned are to be completely constructed by the end of the contract term.

Deliverables:

- Project Management Plan, budget, and payout curve
- Meeting agendas and minutes
- Monthly invoices and progress reports
- Project Schedule

Task 2: Construction

The nature of these projects will generally limit the construction activities required to produce a successful project. However, the steps expected for almost all projects are outlined in items A. through J. below.

A. PRE-CONSTRUCTION MEETING: No work for any phase of construction shall be started without a notice to proceed from MTA. After receiving a notice to proceed, and at least 15 Calendar Days prior to beginning any On-Site construction, unless otherwise authorized in writing by MTA, a pre-construction meeting at a time mutually agreed upon shall be held by the Contractor. At this meeting, we will discuss the plan of operation, required contract provisions, environmental commitments if applicable, erosion control, traffic control/work zone safety, utility relocations, inspection, materials acceptance, independent assurance, quality control plans, DBE/subcontractors, etc, and to establish the level of detail to be required for measuring progress with regard to construction Pay Items. The Construction Engineering Inspector (CEI) will prepare for and conduct the meeting. The MTA Capital Project Manager or a designee will arrange a time and location for the meeting and will attend to assist as needed. The Contractor, ADA office representatives, Metro Sidewalk and/or Bikeway Program Coordinators, assigned CEI, all utility owners, and other Metro representatives, as needed, shall be invited to this meeting. Minutes of this meeting, including an attendance roster, shall be kept by the CEI, and key decisions shall be fully documented. At a minimum, the following shall be submitted at the pre-construction meeting:

- Schedule
- Plan of Operation
- Traffic Control Plan, including bike/pedestrian detours
- Environmental Compliance Plan, if required by the Contract
- Erosion Prevention and Sediment Control Plan

Before the pre-construction conference, if needed, the Contractor shall hold a group utility scheduling meeting with representatives from the utility companies involved with the Project. The Contractor shall incorporate the utilities' time needs into the Contractor's Schedule submitted at the pre-construction conference.

A project walk-through may be scheduled during the preconstruction meeting. Meeting attendees will walk the limits of the project to discuss construction methods, traffic control, utility coordination, coordination with adjacent projects, and potential issues or problem areas.

B. MAINTAINING TRAFFIC: The operations under this contract shall be scheduled and conducted in such a manner and sequence as to cause the least practicable interference with the traveling public, fire protection and utility services. Where work is carried on in or adjacent to any street, alley or public place, the Contractor shall furnish and erect such barricades, lights, fences, and danger signals, shall provide such watchmen, and shall take such other precautionary measures for the protection of person or property and of the work in compliance with the current MUTCD, Part 6, Temporary Traffic Control Measures. All temporary traffic control measures shall be approved by NDOT Permits and/or the Engineer. Contractor may be required to furnish watchmen in sufficient numbers to protect the work. Failure to comply with these requirements will result in shutting down the work until the Contractor provides the necessary traffic control measures or protections. The Contractor responsibility for the maintenance of barricades, signs, lights, and for providing watchmen shall not cease until the project shall have been accepted by Metro.

The Contractor shall be responsible for the safety and operational aspects of the project work zone. The contractor shall be responsible for traffic control items in accordance with MUTCD and as specified by the Nashville Department of Transportation and Multimodal Infrastructure (NDOT) including safety of pedestrians and bicyclists. Those items will be paid for under the appropriate line items for the work. All costs for the management of traffic not associated with line items bid should be paid for in item 712-01 Traffic Control per EACH. This shall be a single payment on each project for the above referenced item.

The existing cross streets and private drives cannot be closed for extended periods. However, this does not require through traffic usage at all times. A two-day notice shall be given to the Utility Development Coordinator, NDOT, 720 South Fifth Street, Telephone number 862-8760, prior to closing of any street or alley, and shall include the estimated duration of the closure. Said street or alley shall not be closed until approval is granted. All temporary traffic control measures must be submitted to the Permit Office at least 48 hours prior to closure of a street or a lane of traffic.

The use of police officers for maintaining traffic control during construction, as directed by the NDOT Permit Office, shall be furnished and paid by the contractor and reimbursed under item 712-08.06.

C. WORK IN EASEMENTS: Where work is to be constructed within easements on private property, it shall be subject to the provisions of the easement agreement on file and open to inspection in the Office of the Metropolitan Clerk.

D. PREINSPECTION AND NOTIFICATION BY THE CONTRACTOR: When construction of any phase or project is ready to start, the Contractor is expected to inspect the project, take elevations of the grade work, if required, and point out any items that are not in agreement with this assignment, so that it may be corrected prior to commencing construction in the proposal for the work submitted. Only unforeseen changes will be allowed as a modification to the PO once it has been submitted to the Department.

E. STREET NAME/BUS STOP SIGNS AND MAILBOXES: The Contractor shall remove, preserve, and replace all street name and traffic control signs, mailboxes etc. Street name signs shall be replaced as specified by the engineer. This shall be considered an integral part of the work and no separate payment therefore will be made.

F. PROTECTION OF TREES AND SHRUBBERY: Special care shall be taken to protect from damage to all trees, shrubbery, plantings, or improvements on private property that are not being impacted by the construction or which are not directly within the construction limits.

G. NOTIFICATION TO AFFECTED PROPERTY OWNERS: The Contractor will be required to provide advance notice of at least three (3) days to all property owners/affected parties when construction activities directly impact access to their property. Additional communication will be provided as necessary throughout the course of the project until completion.

H. PERMITS: The Contractor is required to comply with all Metro, State, and Federal permits required for each project.

- **Roadway Permits** - When work is to be performed in the roadway the contractor shall obtain a permit from Metro utility coordinator at 615-862-8782. Any cost associated within the provisions set forth in that permit will be reimbursed as part of the contract under item SP-25. If a uniformed police officer is required, the cost for that service will be paid for under the unit prices in the contract under item number 712-08.06.

NDOT may require the use of off-duty sworn peace officers, as defined and specified in Tenn. Code Ann. §§ 62-35-102(18) and 62-35-1 03(a)(15)(b), for traffic control where appropriate. Officers **must** be in uniform. Officers from jurisdictions other than the MNPD must be in compliance with the requirements of Tenn. Code Ann. § 62-35-141 and all other applicable statutes, rules and regulations. When a permit issued by the department of public works requires an off-duty police officer, the officer must be present at the work site and actively engaged in the control of traffic. If the officer is not permitted to wear original uniform, the officer must present the same appearance as law enforcement officer. Contractor shall conform to the time restrictions set forth by Metro.

- **MNPS Permits-** Metropolitan Nashville Public Schools is committed to having individuals who pose no known risk of physical, emotional, or educational harm to children, either through their direct contact with children or through their appropriation of public resources intended to benefit children, work on their projects. For this reason, MNPS requires all people who work on MNPS facilities or on properties close to those facilities to disclose criminal or employment repercussions imposed upon them due to allegations made against them as well as any acts that they have committed that caused or that in a school district setting are likely to cause physical, emotional, or educational harm to children. MNPS has adopted a policy, the purpose of which is to promote the physical, social, and psychological well-being of its students. Pursuant to this policy, all persons having contact with or who are in the proximity to school children or children in childcare programs must submit the complete criminal background clearance process, pursuant to Tennessee Code Annotated 49-5-413. This includes a search of Federal Bureau of Investigation and Tennessee Bureau of Investigation criminal history files through fingerprinting, Davidson County Criminal Court Clerk database, Department of Children’s Services records, the Sexual Offender Registry, and Abuse Registry. MNPS will conduct a thorough Criminal Background Clearance (CBC) for all third-party contractors. Before a CBC can be conducted, individuals will be required to sign a release giving the District the right to conduct an investigation. If, at any time, the CBC discloses any felony conviction, or any misdemeanor convictions involving violence, theft, dishonesty, fraud, abuse, drugs or sexual misconduct, a person or contractor will not be considered for use on a project on or near a MNPS facility. All parties are to use MNPS’ ORI # so the results will be reported by to the MNPS Office of Criminal Background Clearance. All contractors who work on these projects must get clearance of all employees who work on the site and provide a list of those employees to MPW and to the CEI for daily checks to who is and is not on site. This includes ALL contractors or material suppliers who may be on site at any time.
- **Environmental Permits–** See contract terms for Stormwater Management Requirements. Metro has the authority to suspend all work until all environmental deficiencies concerning environmental permits are alleviated. No additional time shall be added to the Contract due to this work stoppage. Should the Contractor’s activities associated with the work on the project be in violation of the MWS Grading Permit or the ARAP Permit, any fines and/or penalties assessed to the Department will be deducted from monies due the Contractor. Any fines and/or penalties assessed will be the sole responsibility of the Contractor.

I. FIELD CONSTRUCTION: The Contractor shall coordinate all activities with the assigned CEI and provide Daily Work Reports. All project records must be compiled and retained. Materials used on the project must be approved by MTA, NDOT, or on TDOT’s Qualified Product List. The quality of materials used on the Project and tests performed must conform to all Metro’s or TDOT’s standard operating policies and procedures. The Quality Assurance Procedures for Construction generally consists of the following points:

- All materials used on the Project must have test reports, material certifications and/or field testing by certified personnel to document that the material meets appropriate specifications.
- Testing must be in accordance with TDOT's Standard Operating Procedure (SOP 1-1). The source for each type of material must be approved by Metro before delivery is started.
- Progress Payments should not be made on a material if there are insufficient certifications or test data for that material.

J. PROJECT INSPECTION: MTA's CEI will maintain a daily diary for each project and will conduct routine project reviews to assure that the quality of construction and project record keeping is satisfactory. Unsatisfactory workmanship, inspection, acceptance testing, recordkeeping, etc. shall be corrected immediately and avoided in the future. All invoicing shall be approved by the CEI prior to submission to MTA for payment.

On occasion, some repair or improvement projects may require additional construction steps as outlined in items K. through O.

K. FIELD ENGINEERING AND LAYOUT: Alignment and grades for the construction of curbs, curb and gutters, sidewalks, and ramps will be provided on the plans or MTA's representatives. It shall be the responsibility of the Contractor to implement and match all alignments and grades pursuant to the documents and direction of MTA or NDOT. The contractor shall verify all alignment and grades for accuracy prior to actual work being performed. Any discrepancies shall be brought to the attention of the CEI as soon as possible.

L. LOCATION OF EXISTING UNDERGROUND FACILITIES: The location of existing piping and underground utilities such as gas mains, water mains, sanitary sewers, electric duct lines, etc., as shown on the preliminary survey provided have been determined from the best available information by actual surveys or furnished and taken from the drawings of the existing facilities. However, the Metropolitan Government does not assume responsibility for the possibility that during construction, utilities other than those shown may be encountered, or that actual locations of those shown may be different from the locations designated on the contract drawings.

M. PRE-BLAST SURVEY: When necessary, it shall be the responsibility of the Contractor to have a pre-blast survey made of all buildings and walls to which damage might occur from blasting operations. This shall be considered an integral part of the work, and no separate payment therefore will be made.

N. WATER SERVICE LINE WORK: All work on the reconnection or replacement of customer service lines shall be performed by a licensed and bonded plumber. This requirement shall not relieve the Contractor of responsibility for the entire installation. The licensed and bonded plumber must obtain the necessary permits for each water service line reconnection from the engineering and permits section of the metropolitan department of water services for which no charge shall be made by the department.

During the progress of construction, it shall be the responsibility of the Contractor to maintain water service to all customers at all times excepting approved short periods of shutdown. The maximum period that shall be allowed to keep customers out of water service is four hours. If the work requires a longer period of shutoff, then the contractor shall provide adequate temporary service as an incidental part of the work.

O. UTILITY RELOCATIONS: The Contractor and utility owners will be required to co-operate with each other in order to expedite the work required.

Prior to submitting the proposal for the PO, the Contractor will be solely responsible for contacting owners of all affected utilities in order to determine the extent to which utility relocations and/or adjustments will have upon the schedule of work for the project. Exact location shall be determined in the field by contacting the utility companies involved.

While some work may be required "around" utility facilities that will remain in place, other utility facilities may need to be adjusted concurrently with the construction operations. All utility adjustments will be performed by the utility or its representative unless other arrangements are made by the Contractor and agreed upon by the utility owner. All modifications to MWS infrastructure should be done under this contract unless otherwise directed by the Department.

Prior to commencing work, the Contractor shall notify each individual utility owner of the plan of operation in the area of the utilities and shall request them to properly locate their respective utility on the ground. Some utilities can be located by calling the **Tennessee One Call System, Inc. at 1-800-351-1111**. This notification shall be given at least three (3) business days prior to commencement of operations around the utility.

During construction, the Contractor will provide all necessary protective measures to safeguard existing utilities from damage. In the event that special equipment is required to work over and around the utilities, the Contractor will be required to furnish such equipment. The cost of protecting utilities from damage and furnishing special equipment will be included in the price for other items of construction.

Task 3: Project Closeout

FINAL INSPECTION/ACCEPTANCE: Before Final Inspection, the Contractor shall clean up the Project in accordance with TDOT's Standard Specification, Subsection 104.11. MTA will make no separate or additional payment for Final Clean-Up.

When all work is complete, the CEI and other MTA, or Metro representatives as required will make a final inspection of the Project to determine the quality, completeness, and acceptability of the work and to assure that the Project was constructed in reasonable conformance with the Contract requirements, all applicable plans and Standard Specifications. If the inspection discloses any work, in whole or in part, as being unsatisfactory, a Punch List will be issued for correction and the Contractor shall immediately comply with and execute such instructions. Any delay in addressing punch list items may result in temporary suspension of future assignments. As part of project closeout, contractor must provide red lines to the plans for any elements of construction that varies from the original design. Red lines must be provided as part of the punch list item or within 2 weeks from end of construction, whichever is earlier. Final payment will be processed after all punch list items are complete, redline drawings submitted, all permits approved and completed, and the project is accepted by the Agency. Refusal to complete punch list items will result in forfeiture of retention payment.

Task 4: Additional Services

In addition to these tasks, Metro reserves the right to request additional services that are related in nature to those being performed as part of this project. Task 4 is set aside to accommodate such requests of the Contractor. Any request for additional services will be made in and agreed upon in writing. Compensation for additional services will be agreed to prior to their performance.

Task 5: Work Warranty

The contractor shall be responsible for warranting work for twelve (12) months following final payment for the construction of the project.

Anticipated upcoming Transit Stop Improvement projects:

1. Harding Pike & Bosley Springs westbound – Improve Act funds
2. Morrow & Alabama southbound – Improve Act funds 2023

3. Buchanan - Improve Act 2022
4. Gallatin Walmart in Madison – Improve Act 2023
5. Trinity & Dickerson - Improve Act 2024
6. Murfreesboro & Thompson – Improve Act 2024
7. Gallatin & Trinity SB & NB – Improve Act 2024
8. Whites Creek & Trinity - Improve Act 2024
9. White Bridge & Corbet
10. Filling in grass strips which may mean re-pouring the existing sidewalk, up to 12 projects per year.

The Table – 3.3 Examples of Construction Tasks are illustrative of project-specific construction tasks that may be required by the Agency.

The Agency may request all, some, none, or any combination of the scope of work and services identified in this RFQ. When the Agency desires any tasks slated under this RFQ, the agency will contact the selected construction company (s) and request a written proposal(s), which will include an estimate of costs and preliminary schedule for the work to be performed on each specific project. At its sole discretion, the Agency will select the construction company (s) to perform the scope of work. **All services** provided under the contracts resulting from this RFQ will be provided through the issuance of Task Orders. See Section 3.5 for a description of the Task Order process.

3.3 Examples of Construction Tasks

| Examples of Tasks | |
|--|---|
| Concrete platforms of various thicknesses and sizes | Storm sewer installation including pipes and inlets |
| Retaining walls | Curb and gutter |
| Bus stop improvements consistent with Nashville MTA design guidelines | Installation of Shared Cycle Track Bus Stop |
| Installation of bus bulb | Re-striping in the roadway |
| Installation of Shared Cycle Track Bus Stop | Bike Lane Striping with Symbols |
| Installation of Bus Island | Installation of electric connection and coordination with NES for installation of meter |
| Traffic Management, including providing Pedestrian and Bicycle access routes during construction | Project Management |
| Installation of sidewalks and/or multi-use paths | Documentation of work with reports, photographs |
| Asphalt roadway patching | Invoicing with required forms for payment |
| Installation of roadway detection loops | Curb ramps with detectable warning strips |
| Connection to nearby traffic signal cabinet | Obtaining appropriate permits |
| Coordinating with utilities, calling One Call | Erosion Control |

3.4 Task Order Process

The contract(s) resulting from this solicitation will be a Task Order contract. Each Task Order shall be identified by a consecutively issued number. The Task Order process will work as follows:

- 1) The Agency will make a written Task Order request for an approach to an identified need for services. The Task Order request may be sent to multiple contractors in the category of construction services to receive proposals to be evaluated based on the most advantageous combination of approach, personnel expertise, cost and schedule.
- 2) The contractor (s) will provide a proposal that includes the estimated costs on a bid sheet and anticipated schedule for completion.
- 3) The Agency and the contractor will agree on a final scope of work, approach, schedule, and total cost. The approval of the Task Order will follow the Agency's procurement approval process.
- 4) Upon approval of the final proposal, the Agency will issue a Notice to Proceed with the Task Order.

Except in the event of a declaration of emergency by the Agency's Chief Executive Officer, the contractor is not authorized to perform work in the absence of an approved Task Order. The Agency reserves the right to request Task Order proposals from more than one contractor and to select for assignment the contractor that is offering the Agency the best combination of scope, approach, and schedule.

Time spent preparing responses to task order requests and preparing invoices will not be accepted by the Agency as direct billable hours.

On each invoice, the contractor must separately identify work performed on each task order at each location. While one invoice may include work performed on multiple task orders, the work performed on each task order must be separately delineated and readily identifiable. With each invoice, the contractor must also provide a status update for all task orders issued up to the date of the invoice.

3.5 Scope Elements Involved within Construction Tasks

The sections below represent typical task scoping efforts that the selected construction company (s) may be requested to perform for new construction efforts.

Project Initiation

Upon Notice to Proceed with a Task Order assignment, key members of the contractor's team will meet with the Agency and its partners for a project kick-off meeting to review the scope of work and schedule to refine project details. The Agency values the importance of ongoing value-added communication and expects well established and maintained lines of communication throughout the project. Work in a Task Order may include:

- Identify project contacts and establish interface protocols between the contractor's team, the Agency, and any other parties that will be involved in the construction process
- Review the work plan and task order schedule with associated milestones

3.5 Task Order Process

The contract(s) resulting from this solicitation will be a Task Order contract. Each Task Order shall be identified by a consecutively issued number. The Task Order process will work as follows:

- 1) The Agency will make a written Task Order request for an approach to an identified need for services. The Task Order request may be sent to multiple contractors in the category of services to receive proposals to be evaluated based on the most advantageous combination of approach, personnel expertise, and schedule.
- 2) The contractor (s) will provide a proposal that includes the, work to be performed by subcontractors, if applicable, and a total cost that will itemize the cost for the prime contractor's work, each subcontractor, and any applicable reimbursable direct costs.
- 3) The Agency and the contractor will agree on a final scope of work, approach, schedule, and total cost. The approval of the Task Order will follow the Agency's procurement approval process.
- 4) Upon approval of the final proposal, the Agency will issue a Notice to Proceed with the Task Order.

Except in the event of a declaration of emergency by the Agency's Chief Executive Officer, the contractor is not authorized to perform work in the absence of an approved Task Order. The Agency reserves the right to request Task Order proposals from more than one contractor and to select for assignment the contractor that is offering the Agency the best combination of scope, approach, and schedule.

Time spent preparing responses to task order requests and preparing invoices will not be accepted by the Agency as direct billable hours.

On each invoice, the contractor must separately identify work performed on each task order. While one invoice may include work performed on multiple task orders, the work performed on each task order must be separately delineated and readily identifiable. With each invoice, the contractor must also provide a status update for all task orders issued up to the date of the invoice.

3.6 Qualification Requirements

To be considered for contract award, proposers must have:

- TN contractor's license for your firm
- 3 to 5 years experience performing services of similar size and scope
- 3 representative projects

3.7 CONFIDENTIALITY / EXCLUSIVITY REQUIREMENTS

Proposers are advised that if selected for contract award, the Proposer will enter an exclusive arrangement for work on the On-Call Contractor Sidewalk and Bus Platform Construction and will be prohibited from providing any other services in any aspect for any other work related to the On-Call Contractor Sidewalk and Bus Platform Construction. This requirement applies to the prime Proposer, all *subcontractors*, and all individuals that are members of the selected Proposing team. Proposers are advised that all reports, drawings, specifications, estimates or other materials related to the On-Call Contractor Sidewalk and Bus Platform Construction are to be treated at all times as confidential and

may not be distributed to any party, at any time for any reason, without the express prior approval of Nashville MTA.

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3.9 PROPOSAL SUBMISSION FORMAT

Proposers shall include all of the items listed below in the order shown, in their Qualifications submissions. Each section should be clearly labeled, with pages numbered and separated by tabs. This format is necessary for evaluation purposes. A more detailed explanation of the requested services is found in Section 3.0, the Scope of Work and 3.10, the Evaluation Criteria.

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

Submissions shall include FIVE tabbed sections (Part 1, Part 2, Part 3, Part 4, and Part 5) and shall be indexed in the order outlined below. Submissions shall list questions and responses and/or attachments as numbered and listed within each section. The contents of each section should be concise and should address the Evaluation Criteria, Project Tasks, Project Goals and Objectives, and Scope of Work.

Please be advised each Part referenced is the minimum submission requirement requested by Nashville MTA.

PART 1: **Cover Page and Cover Letter**

All Qualifications submissions shall be accompanied by a cover letter of introduction and executive summary of the submission. ***Proposers cannot use WeGo Public Transit as a project reference.*** (ten (10) page limit excluding TN contractor's license)

- Qualifications, Experience, References and Executive Summary
 1. Briefly introduce the Proposer, providing a summary of the Proposer's administration, organization and staffing.
 2. Clearly state the contact person title and contact information.
 3. Describe the Proposer's qualifications for successfully completing the project.
 4. Describe the Proposer's experience in the last three (3) to five (5) years in performing services of similar size and scope.
 5. Provide references for previous sidewalk construction projects from at least three business or government entities, including the name of the entity, contact name, telephone, and email address. Proposers must verify the contact information before submitting the reference to ensure that the contact information is still valid. **Note:** Proposers are advised that references that cannot be contacted due to incorrect outdated information will affect the overall evaluation of the Proposer's submission.
 6. Provide a TN contractor's license for your firm.

PART 2:

Understanding of the Scope of Work Project

This section should include a detailed discussion of the Proposer's understanding of the On-Call Contractor Sidewalk and Bus Platform Construction scope. Please confirm your understanding of the task order process located in Section 3.4. Provide your method for sourcing materials. (ten (10) page limit)

PART 3:

3 Representative Projects

1. Provide a summary detailing your project approach and outcome (include start and completion date).
2. Provide photos of the end result.
3. Were the projects completed within the initial budget? If the project was not completed within the initial budget, explain why.
4. Was the project completed on schedule?
5. After completion, did the Proposer perform any repairs or warranty work?

The three representative sidewalk construction projects should include the name of the entity, contact name, telephone, and email address from three business or government entities. Proposers must verify the contact information before submitting the reference to ensure that the contact information is still valid. Note: Proposers are advised that references that cannot be contacted due to incorrect outdated information will affect the overall evaluation of the Proposer's submission. ***Proposers cannot use WeGo Public Transit as a project reference.*** (eight (8) page limit excluding photos)

PART 4:

Required Forms

Proposers are required to complete and submit the following forms located in Section IV Clauses and Required Forms.

1. Please review, sign and submit forms. If a form is not applicable to the submission or the proposing organization, ***please indicate not applicable and SUBMIT.***

*Submission, Licensing and Permits

| | | | |
|---|--|---|--|
| COST FORM (INTENTIONALLY REMOVED) | DBE Compliance Statement | CONTACT INFORMATION OF SIMILAR CONTRACTS/REFERENCES | Subcontractor Information |
| ACKNOWLEDGMENT OF ADDENDA | CERTIFICATE OF AUTHORITY | AFFIDAVITS | Insurance Certificate |
| AFFIDAVIT OF NON- COLLUSION | CERTIFICATION OF RESTRICTIONS ON LOBBYING | NOTICE TO CONTRACTOR | DBE Certificate |
| CONTRACTOR'S CERTIFICATION OF ELIGIBILITY | CERTIFICATION REGARDING DEBARMENT AND SUSPENSION PRIMARY PARTICIPANT | BUY AMERICA CERTIFICATION- INTENTIONALLY REMOVED | License |
| COMPLIANCE WITH SPECIFICATIONS | CERTIFICATION OF LOWER-TIER PARTICIPANTS, CERTIFICATION REGARDING DEBARMENT AND SUSPENSION | BUY AMERICA CERTIFICATION- INTENTIONALLY REMOVED | Permits Per Task (if applicable) |

All forms may not apply but must be submitted and indicate not applicable

PART 5:

Acceptance of the Proposed Contract Terms and Conditions

This section will indicate any exceptions to the Scope of Work, general terms and conditions, or other requirements listed in the Proposed Contract.

- Overall compliance to requirements and acceptance.
 1. A signature is not required on the Proposed Contract included in the RFQ; however, any exceptions or proposed changes to the terms and conditions **must be detailed in this Part and submitted with the Qualifications** in order to be considered. Nashville MTA reserves the right to make changes to the Proposed Contract and to reject or accept any changes the Proposer may propose.

3.10 EVALUATION CRITERIA

Proposers' submissions shall be evaluated using the following criteria:

Evaluation Criteria and Point Score Allocation:

| Criterion | Standard | Points Value |
|--|---|--------------|
| Qualifications, Experience, and References | <ul style="list-style-type: none"> Does the Proposer have the experience, knowledge, skill, and resources to successfully accomplish this project? What is the Proposer's previous experience in providing services to government agencies? Did the Proposer's references indicate positive experiences with the Proposer? Would the reference(s) engage the Proposer again for the scope of work? Does the proposer have experience in providing all required elements of this request? Did the Proposer describe how the work will be managed? Does the Proposer have a valid TN contractor's license? | 45 |
| Understanding of the Scope of Work | <ul style="list-style-type: none"> Does the proposed approach reflect a thorough approach to this request? Is there evidence of a clear understanding of the task order process and requirements? What is the Proposer's experience sourcing materials? | 15 |
| Representative Projects | <ul style="list-style-type: none"> Do the 3 representative projects reflect the scope of work that the Proposer will perform on this project? Did the Proposer's role(s) on the representative projects lead to success? Did the time spent by the Proposer on the representative project(s) reflect the level of responsibility that the Proposer will have on this project? Do the representative projects reflect the Proposer's knowledge and understanding of the issues that the Proposer will be managing on this project? Did the proposer stay within the initial budget and complete on schedule? Did the proposer perform any repair or warranty work? | 40 |
| Total Points | | 100 |

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D. 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 RFQ and any contract entered into.

2. PROPOSER AFFIDAVITS NON-COLLUSION

The Proposer guarantees that the Qualifications submitted are 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 Proposal.

3. INSURANCE REQUIREMENTS

During the term of this Contract, 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 below by a **check mark**.

a) Products Liability Insurance in the amount of one million (\$1,000,000) dollars (If the Contractor will be shipping to a receiving department at the Agency)

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

c) 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 the Agency of the Services, whichever is later. This provision shall expressly survive the termination of the Services or the Contract.

d) 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.

e) 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).

f) Other insurance

g) Such insurance shall:

1. 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 the protection afforded to the Covered Entities.

2. 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.

3. Regarding Automotive Liability Insurance including vehicles owned, hired, and non-owned, said 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.

4. 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.

5. Other Insurance Requirements. Contractor shall:

a) Prior to commencement of the Services, furnish the Agency with original certificates and amendatory endorsements effecting coverage required by this **Section 16** of the proposed contract 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 the Agency.

b) Provide certified copies of endorsements and policies if requested by the Agency in lieu of or in addition to certificates of insurance.

c) Replace certificates, policies, and/or endorsements for any such insurance expiring prior to completion of services.

d) Maintain such insurance from the time the Services commence until completed. Failure to maintain, renew coverage or provide evidence of renewal as required by the Agency may be treated by the Agency as a material breach and Default under this Contract.

e) Place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A-. Modification of this standard may be considered upon written appeal to the Agency Director of Risk Management Services.

f) Require all subcontractors 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 the Agency.

g) Disclose any deductibles and/or self-insured retentions greater than ten thousand dollars (\$10,000) and obtain the Agency's written approval of such deductibles and/or self-insured retentions prior to the commencement of the Services.

h) Not have, if Contractor has or obtains primary and excess policies, any gap between the limits of the primary policy and the deductible features of the excess policies.

Upon request, the Proposers will provide a Certificate of Coverage with the Nashville Metropolitan Transit Authority named as Certificate Holder.

The Proposers shall indemnify and hold harmless the Agency 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 Proposers 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 Proposers 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 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 RFQ and any Contract that may be issued. The Proposer warrants that the individuals who have signed the submission have the legal right and authority to bind the Proposer.

12. AUTHORIZATION OF SUBMISSION

If the submission 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 address 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 Proposal.

13. SUBCONTRACT APPROVAL

Proposers' subcontracts 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 Agency reserves the right to conduct a cost or price analysis for any purchase or service. The Agency 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 Agency may require a pre-award audit, and potential Proposers shall be prepared to submit data relevant to the proposed work which will allow the Agency 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 Agency reserves the right to negotiate with the single Proposers to achieve a fair and reasonable price. If both parties cannot agree upon a negotiated price, the Agency reserves 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 30 days from receipt of each payment the Proposer receives from the Agency. Any delay or postponement of payment from the above reference may occur only for good cause following written approval of the Agency. This clause applies to both DBE and non-DBE subcontractors. If the Proposers determine the work to be unsatisfactory, it must notify the Agency 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 Agency.

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 – The Federal Transit Administration (FTA) will be notified by the Agency of all formal, written protests, when FTA funds are involved.

B. The Agency 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 Agency. Accordingly, the Agency intends to provide a thorough review of all bona fide Proposal protests. The Agency's 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 Agency. In its consideration of a protest, the Authority reserves 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 on the basis that the Agency has failed to comply with applicable Federal or State Regulations or with the Agency's 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 in particular the Federal or State law or Agency 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 should be submitted to:

Procurement Manager
430 Myatt Drive
Nashville, TN 37115

D. Types of Protests and Timing

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

1. Protest regarding the RFQ

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

This type of protest would include any claim that the RFQ contained exclusionary or discriminatory specification, any challenge to the basis of award, or any claim that the Proposal documents or the RFQ process violated applicable Federal or State law, or that the Agency failed to follow its Procurement Process in the RFQ.

2. Protests regarding Requirements and Responsiveness

Any protest regarding the requirements and responsiveness of the RFQ by the Agency must be filed with Agency 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 Agency.

This type of protest would include any challenge to determinations by the Agency of the responsiveness of or the responsibility of a Proposer, or any claim that the requirements and responsiveness of the RFQ violated Federal or State law or the Agency's 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 Agency.

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

E. Agency Response

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

1. Types of Protests

a. Protest regarding RFQ

Upon receipt of a timely filed protest regarding the RFQ, the Agency will postpone the opening until resolution of the protest. No additional submissions will be accepted during the period of postponement.

If the protest regarding the RFQ involves a claim of unduly restrictive or exclusionary specifications, the Agency will, in evaluation of the protest, consider both the specific need of the Agency for the feature or item challenged and any effects on competition of including the specifications regarding that feature or item. If the Agency determines that such feature or item was included in the specification in order to meet justified and valid transit needs of the Agency, and was not unduly restrictive of competition or designed to exclude a particular competitor, then the Agency 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 Agency will suspend its evaluation of all Qualifications submitted until resolution of the protest, if the Agency determines that the protestor has established that there are reasonable doubts regarding the responsiveness of a Proposal or the responsibility of a Proposers or regarding the Agency's 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 Agency will not proceed with contract, if necessary, until the resolution of the protest if the Agency 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 Agency's Procurement Process.

2. Decisions by Agency

As indicated above, in most instances the Agency will suspend the procurement process upon receipt of a bona fide protest. However, the Agency reserves 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 Agency determines 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 Agency will issue a written decision of the basis of the information provided by the protestor, the results of any meetings with protestor, and the Agency's own investigation. If the protest is upheld, the Agency will take appropriate action to correct the procurement process and protect the rights of the protestor, revised evaluation of Proposal or Agency determinations, or termination of the contract. If the protest is denied, the Agency will lift any suspension imposed and proceed with the procurement process.

F. FTA Protest Procedure

Reviews of protests by FTA will be limited to claims that the Agency failed to have or follow protest procedures, or claims the Agency failed to review a complaint or protest. A protestor must exhaust all administrative remedies with the Agency before pursuing a protest with FTA. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation.

Under certain circumstances, protest may be made to the FTA in accordance with FTA circular 4220.1F.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

18. ADDITIONAL SERVICES REQUEST

The Agency reserves 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 Agency.

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 Agency unless authorized in writing by the Agency.

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 solicitation and/or contract. This assignment, should it occur, shall be agreed to by the Agency and Proposers. Once assigned, each Agency will enter into its own contract and be solely responsible to the Proposers 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 Proposers.

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 Agency, unless the Agency has 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.

23. ADA ACCESS REQUIREMENTS

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

END SECTION III

IV. CLAUSES AND FORMS

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 the 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.

End of Text on this Page

REQUIRED FORMS

FORM 1 – COST FORM – INTENTIONALLY REMOVED

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: _____

ADDENDUM NUMBER: _____ DATED: _____

ADDENDUM NUMBER: _____ DATED: _____

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 Qualifications, 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 RFQ, 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 _____

FORM 6 - A

DISADVANTAGED BUSINESS ENTERPRISE LETTER OF INTENT

SUBMIT ONE FORM FOR EACH DBE SUBCONTRACTOR AND/OR SUPPLIER. IF THE DBE IS A 2nd, 3rd, or LOWER TIER SUBCONTRACTOR, THIS FORM MUST ALSO BE SIGNED BY THE SUBCONTRACTOR THAT IS UTILIZING THE DBE.

BIDDER:

Name of Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

DBE:

Name of Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE:

~~The Bidder is committed to utilizing the above named DBE for the work described above. The estimated dollar value of this work is \$ _____, which is _____% the total base bid proposal.~~

AFFIRMATION

~~The above named DBE affirms that it will perform the portion of the contract for the estimated dollar value as stated above.~~

~~By: _____~~

~~Signature of DBE and Title _____ Date _____ Name _____~~

~~By: _____~~

~~Signature of Subcontractor and Title _____ Date _____ Name _____~~

~~If the Bidder does not receive award of the prime contract, any and all representations in this Letter of Intent shall be null and void.~~

~~By: _____~~

~~Signature of Respondent and Title _____ Date _____ Name _____~~

FORM 6 – B

BIDDER DBE GOALS – COMMITMENT TO DBE (PARTICIPATION FORM)

Acknowledgement: Solicitation Number: _____ has a minimum DBE participation goal of ____%.

The undersigned Bidder has satisfied the requirements of the bid/proposal specification in the following manner (please complete the appropriate spaces):

1. **Self Performance:** The proposer, a certified DBE firm, is committed to **meeting or exceeding** the DBE goal through self-performance.
2. **Self Performance & Percentage Participation:** The proposer, a certified DBE firm, is committed to **meeting or exceeding** the DBE goal, with a minimum of ____% self-performance and a minimum of ____% DBE subcontracting participation on this contract.
3. **Percentage Participation:** The proposer is committed to **meeting or exceeding** the DBE goal, with a minimum of ____% DBE subcontracting participation on this contract.
4. The Contractor is **unable to meet the required minimum DBE goal** and is **committed to** ____% DBE utilization on this contract and **submits documentation demonstrating good faith efforts.**
5. The Contractor is **unable to meet the required minimum DBE goal** and **submits documentation demonstrating good faith efforts consistent with Appendix A of 49 CFR 26. The Bidder should attach as many pages as necessary to provide a full and complete narrative and supporting documentation of good faith efforts made (See Form 6-C).**

It is the present intent of the Bidder to utilize the specific DBE firms identified on Form 6 – D: DBE Utilization Plan in the execution of this contract. If for any reason, one or more of the DBE identified are unable or unwilling to participate, the Bidder will make good faith efforts to replace the DBE with a similar DBE.

Note: The Business Diversity Office will only credit DBE participation that is performed by a TNUCP certified entity at the time of submission.

Firm/Company Name: _____

Printed Name: _____ **Title:** _____

Signature: _____ **Date:** _____

**NASHVILLE METROPOLITAN TRANSIT AUTHORITY
CONTRACTOR GOOD FAITH EFFORTS DOCUMENTATION FORM**

CONTRACT NAME: _____

NAME OF CONTRACTOR: _____

In addition to the disadvantaged business enterprises (DBE)s that are listed and proposed for utilization on this contract, the following DBEs were also contacted regarding this contract.

Please use as many sheets necessary to document your efforts.

| Firm Name & Address | Contact Person & Phone Number | Requested Bid Items: Supplies, Services or Materials | Bid Amount | Solicitation Method & Date | Reason Rejected |
|--------------------------------|--|---|-------------------|---------------------------------------|------------------------|
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| | | | | | |
| | | | | | |

Contractor's Authorized Signatory _____ Date

**NASHVILLE METROPOLITAN TRANSIT AUTHORITY
DBE UTILIZATION PLAN**

CONTRACT NAME: _____

NAME OF CONTRACTOR: _____

The following Disadvantage Business Enterprises (DBE)s will be used on this Contract:

Please use as many sheets necessary to document your efforts.

| (A) DBE Firm Name & Address | (B) Contact Person & Phone Number | (C) Bid Items Provide by DBE: Supplies, Services or Materials | (D) DBE Contract Value (Required) |
|---|---|---|---|
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| | | | |
| Total DBE Contract Value (D) | | | |
| Prime Total Bid/Proposal Cost (H) | | | |
| Total DBE Percentage: (D) divided by (H) | | | |

Contractor's Authorized Signatory _____ Date

Goal Recalculation Internal Use:

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 the 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 the 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 the 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 the 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 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 11

CONTACT INFORMATION OF SIMILAR CONTRACTS/REFERENCES

Proposers are requested to supply references for past projects of similar scope. Please provide project name, owner, and contact information including the name, email, and telephone number of the owner's representative that can attest to the work performed. Please include references for subcontractors who are performing key elements of work. References for subcontractors should related specifically to the items of work the subcontractor will be performing in this engagement.

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 an 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~~

V. CONTRACT TERMS AND CONDITIONS (PROPOSED)

NOTE: This is a Proposed Contract. Nashville MTA reserves the right to make changes in the Contract. Requests for changes received after the Submittal Deadline WILL NOT be considered.

NASHVILLE METROPOLITAN TRANSIT AUTHORITY

AND

CONTRACTOR

FOR CONSTRUCTION SERVICES

ON-CALL CONTRACTOR SIDEWALK AND BUS PLATFORM CONSTRUCTION

This Contract No. Project 2023136 (the “**Contract**”) is entered into as of the dated signed by Nashville MTA, by and between Nashville Metropolitan Transit Authority (“**Nashville MTA**”), having its principal office located at 430 Myatt Drive, Nashville, TN 37115, and _____ (“**Contractor**”), a [insert state] [insert type of company], having its principal office located at _____.

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

1. All properly executed amendments to Contract (most recent with first priority)
2. Contract No. Project 2023136
3. The specifications and drawings prepared by the Design Representative for Project # 2023136
4. Request for Quote No. Project 2023136 (the “**RFQ and the Addenda**”)
5. Contractor’s clarification response dated _____, 0:00 P.M.
6. Contractor’s response dated _____, 0:00 P.M.
(collectively, the “**Contract**” or the “**Contract Documents**”)

1. CONSTRUCTION SERVICES

1.0. **On-Call Contractor Sidewalk and Bus Platform Construction** (the “**Project**”)

1.1. Contractor shall provide the services to complete the Project as detailed in this Contract, the RFQ and all Exhibits to this Contract which are incorporated herein by reference (the “**Construction Services**”). Contractor’s duties and responsibilities are more specifically set forth in the RFQ, and the Addenda. All Construction Services under this Contract shall be performed in accordance with the terms and conditions of this Contract, pursuant to good industry practice, and in conformance with all permits, codes, and applicable laws. Nashville MTA reserves the right to review and approve the sequence of Construction Services.

1.2. Nashville MTA may purchase additional Construction Services offered by Contractor under this Contract (“**Additional Services**”). The Additional Services shall be agreed upon in writing with a properly executed amendment of this Contract between the parties.

Additional Services shall be invoiced at the rates specified in the written amendment as agreed to by both parties. The rights and obligations of the parties in this Contract shall pertain to and apply to “Additional Services”, unless stated otherwise in writing.

1.3. Any proposed change to this Contract of the Construction Services shall be submitted to the authorized representative of Nashville MTA for prior approval and shall not become effective unless it is in writing and signed by Contractor and the Chief Executive Officer (CEO) of Nashville MTA or the CEO’s designee. Nashville MTA reserves the right and may order changes or alteration in the Construction Services performed by Contractor. If the changes or alterations affect the Project Price of the Construction Services, the parties must agree as provided in this Contract to the appropriate adjustments, including, but not limited, to the time for completion and compensation for the Construction Services. Contractor may also submit changes to the requirements under the Contract for the benefit of Nashville MTA. Nashville MTA may deny any such proposed change by Contractor or may accept in whole or in part any change by issuing a Change Order that identifies the change, the reasons for the change and the increase or decrease the Project Price, if any.

2. TERM

2.0. Contractor shall commence the performance of this Contract (“**Commencement of Work Date**”) within the agreed upon timeframe of both parties after Nashville MTA issues a Notice to Proceed to Contractor per awarded task order. The Construction Services shall begin on the Commencement of Work Date and shall conclude on the date of Final Payment, unless terminated earlier pursuant to the terms of this Contract, but in no event shall Contractor take longer than the agreed upon timeframe of both parties per awarded task order to complete the Project to Final Completion after the Commencement of Work Date, not including any Warranty Period as provided in this Contract (“**Term**”).

2.1. Once timely commenced, Contractor shall diligently continue its performance to and until Final Payment of the Project Price, as defined in **Section 4** of this Contract. All limitations of time set forth in this Contract are material and are of the essence of the Contract. This Contract may be extended by the parties with a properly executed written amendment to this Contract.

3. PROJECT SCHEDULE PER AWARDED TASK ORDER

3.0. Contractor is required to submit per awarded task order original copies of the signed Contract along with required documentation, including, but not limited to, insurance, bonds, signed contracts, safety plan, and Quality Assurance/Quality Control plan, (the “**Required Documents**”) within ten (10) calendar days prior to the execution of this Contract, unless a later date is otherwise directed by Nashville MTA in writing. Nashville MTA shall give Contractor a written notice to proceed (“**Notice to Proceed**”) to commence the Project after receipt of all Required Documents. Further, the parties agree that the Project Schedule shall not commence until the Notice to Proceed is issued by Nashville MTA. A pre-construction meeting attended by Contractor and Nashville MTA shall be held within five (5) business days of Nashville MTA’s receipt of the Required

Documents. Nashville MTA expects to issue the Notice to Proceed at such pre-construction meeting.

3.1. Contractor shall keep adequately staffed and properly trained labor and supervisors on the job site in order to complete the Construction Services. Contractor has a continuing duty to perform the Construction Services according to the Contract and consistent with the Project Schedule requirements, provided, however, that completion of Construction Services shall in all cases be subject to extensions for a period of time equal to the delay in completion caused as a result of an Excusable Delay. As used herein, the term “**Excusable Delay**” shall mean any delay in performance due to strikes, lockouts, or other labor or industrial disturbance, civil disturbance, future order of any government, court or regulatory body claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, lightning, earthquake, fire, hurricane, tornado, flood, washout, explosion, unusually inclement weather, moratorium or other unusual delay in obtaining necessary governmental permits or approvals (with Contractor using commercially reasonable efforts to obtain the same) or any other cause whatsoever beyond the reasonable control of Contractor (excluding financial inability to perform) to the extent that in each case of Excusable Delay, Contractor has notified Nashville MTA in writing within five (5) days after the occurrence of each Excusable Delay event and has specified in detail the circumstances constituting the Excusable Delay and the anticipated number of days by which performance is delayed as a result thereof. Nashville MTA, in its sole and reasonable discretion, shall determine whether the delay is an Excusable Delay.

3.2. Contractor agrees to accelerate its performance if it is behind the Project Schedule at no cost to Nashville MTA. Such acceleration of performance includes, but is not limited to, retaining additional manpower, equipment, or other support at Contractor’s sole cost. Upon written notification from Nashville MTA that Contractor fails to attain the timeline as provided in the Project Schedule, Contractor shall immediately create, produce, and implement a written plan (the “**Recovery Schedule**”) for attaining compliance with the terms of the Project Schedule.

3.3. An update of the Project Schedule, or if applicable, the Recovery Schedule with as-built dates evidencing progress shall be submitted by Contractor to Nashville MTA with each Payment Request.

3.4. Contractor shall perform the Construction Services in general accordance with the Project Schedule, or if applicable, the Recovery Schedule, submitted to Nashville MTA.

3.5. Contractor shall also prepare and keep current, for the Design Representative’s approval, a schedule of submittals which is coordinated with Contractor’s Project Schedule and allows the Design Representative reasonable time to review submittals.

4. COMPENSATION

4.0. The compensation under this Contract shall not exceed [**insert monetary amount**] (\$ _____) (the “**Contract Value**”). A Notice to Proceed shall be issued for the Project Price per awarded task order. Nashville MTA reserves the right, with an executed written Change Order

to exercise any options or alternates. Notwithstanding any other provision of this Contract, Contractor is not guaranteed to earn any minimum amount of compensation. Rather, the total amount of compensation Contractor may earn under this Contract shall be based on the authorized and approved Construction Services performed. The obligations of Nashville MTA under this Contract shall automatically terminate upon Final Payment of the Project Price.

4.1. Prior to the Notice to Proceed, Contractor shall prepare and present to Nashville MTA **Contractor's Schedule of Values** per awarded task order, as apportioning the Project Price among the different elements of the Project for purposes of periodic and Final Payment. Contractor's Schedule of Values shall be presented in a format acceptable to Nashville MTA, with such detail and supporting information as Nashville MTA may request. Contractor shall neither imbalance nor artificially inflate any element of the Schedule of Values. Nashville MTA reserves the right, with an executed Change Order, to exercise any options or alternates. Contractor shall not use any index for price fluctuations or guides to any formula for adjusting price fluctuations unless specifically agreed upon both parties. Contractor's Schedule of Values shall be utilized for Contractor's requests for payment ("**Payment Requests**") but shall only be so utilized after such Schedule of Values has been approved in writing by Nashville MTA.

4.1.1. In its schedule of values, the Contractor is to include no more than ten percent (10%) of its total bid amount for mobilization. The Contractor may submit a request for payment for mobilization upon Nashville MTA's receipt and approval of the Contractor's performance and payment bonds, insurance certificates, schedule of values, project schedule, quality assurance and site safety plans, and proof of having obtained all applicable permits needed to perform the work.

4.1.2. Contractor shall submit Payment Requests to:

Mta.accountspayable@nashville.gov

With a copy to: Lydia.Benda@nashville.gov

4.2. Each Payment Request shall be made on or before the 10th day of each month for and shall be signed by Contractor and shall constitute Contractor's representation that: (i) the quantity and quality of Construction Services has reached the level for which payment is requested; (ii) the Construction Services have been properly installed or performed in strict compliance with this Contract; (iii) Contractor has paid all Contractor's Agents from previous Payment Requests; and (iii) Contractor affirmatively represents and warrants that all Construction Services for which Nashville MTA has previously paid is free and clear of any lien, claim or other encumbrance of any person whatsoever. Furthermore, Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all work, materials and equipment included in such payment shall be vested in Nashville MTA. Thereafter, Nashville MTA shall review the Payment Request and may also review the work at the Project construction site or elsewhere to determine whether the quantity and quality of the work, materials and equipment of the Construction Services are as represented by the Payment Request and are as required by this Contract. Nashville MTA shall approve in writing the amount which, in the opinion of Nashville MTA, is properly owing to Contractor. Nashville MTA's approval of Contractor's Payment Requests shall not preclude

Nashville MTA from the exercise of any of its rights as set forth below. In the event that Nashville MTA makes written demand upon Contractor for amounts previously paid by Nashville MTA as contemplated in this **Section 4.2.**, Contractor shall promptly comply with such demand.

- (A) When payment is received from Nashville MTA, Contractor shall within fifteen (15) calendar days pay all of its agents, employees, subcontractors, materialmen, laborers, suppliers and other third parties in connection with the Project (the “**Contractor’s Agents**”) the amounts they are due for the work covered by such payment. In the event Nashville MTA becomes informed that Contractor has not paid a Contractor’s Agent as provided in this **Section 4.2.(A)**, Nashville MTA shall have the right, but not the duty, to issue further checks and payments to Contractor of amounts otherwise due hereunder naming Contractor and any such Contractor’s Agent as joint payees. Such joint check procedure, if employed by Nashville MTA, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit Nashville MTA to repeat the procedure in the future.
- (B) Neither payment to Contractor, utilization of the Project for any purpose by Nashville MTA, nor any other act or omission by Nashville MTA shall be interpreted or construed as an acceptance of any work of Contractor not strictly in compliance with this Contract. Further, approval or acceptance by Nashville MTA of any of Contractor’s Construction Services under this Contract shall not constitute, or be deemed, a release of the responsibility and liability of Contractor or Contractor’s Agents 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 Construction Services of Contractor or Contractor’s Agents.
- (C) Nashville MTA shall have the right to withhold and refuse to make payment, have a right of setoff and, if necessary, may demand the return of a portion or all of the amount previously paid to Contractor due to:
- (1) The quality of a portion, or all, of Contractor’s Construction Services not being completed in accordance with the requirements of this Contract;
 - (2) The quantity of Contractor’s Construction Services not being completed as represented in Contractor’s Payment Request, or otherwise;
 - (3) Contractor’s rate of progress being such that, in Nashville MTA’s opinion, Substantial Completion or Final Completion, or both, may be inexcusably delayed;
 - (4) Contractor’s failure to use Contract funds, previously paid Contractor by Nashville MTA, to pay Contractor’s Project-related obligations including, but not limited to Contractor’s Agents;
 - (5) Claims made, pending or known against Nashville MTA or its property in

relation to this Contract or the acts or omissions of Contractor or any of Contractor's Agents;

- (6) Nashville MTA's rights to Liquidated Damages;
- (7) Loss or expenses of Nashville MTA caused by Contractor; or,
- (8) Contractor's failure or refusal to perform any of its obligations to the satisfaction of Nashville MTA.

(D) Nashville MTA shall, subject to the rights set forth in this **Section 4.2.**, make reasonable efforts to make payments to Contractor within thirty (30) days of receipt of a Nashville-MTA approved Payment Request.

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

(F) "**Substantial Completion**" is the stage in the progress of the Project when the Project or designated portion thereof is sufficiently complete in accordance with the Contract so that Nashville MTA can occupy or utilize the Project for its intended use. Contractor shall accomplish Substantial Completion of the Project within **One hundred fifty (150) calendar days** after the Notice to Proceed is issued. When Contractor considers that the Project, or a portion thereof which Nashville MTA agrees to accept separately, is Substantially Complete, Contractor shall prepare and submit to the Contract Officer and Project Manager a comprehensive list of items to be completed or corrected prior to Final Payment. Failure to include an item on such list does not alter the responsibility of Contractor to complete the entire Project in accordance with the Contract. Upon receipt of Contractor's list, Nashville MTA and Design Representative will make an inspection to determine whether the Project, or designated portion thereof, is Substantially Complete. If Nashville MTA or the Design Representative, through their inspection, finds that the Construction Services are not Substantially Complete pursuant to the terms of this Contract, Nashville MTA shall furnish Contractor in writing a punch list for Contractor to complete to Nashville MTA's written satisfaction and approval. If, when completing the punch list, Contractor is required to repeat all, or any portion, of the items in the punch list, Contractor shall bear the cost of such repeat inspection(s), which cost may be deducted by Nashville MTA from any payment then or thereafter due to Contractor. When the Project or designated portion thereof is Substantially Complete, and upon Nashville MTA's confirmation that Contractor's Construction Services are Substantially Complete, Design Representative and/or Nashville MTA will prepare a **Certificate of Substantial Completion** which shall establish the date of Substantial Completion, and shall fix the time per awarded task order within which Contractor shall finish all items on the list accompanying the Certificate. Nothing herein shall change the time limits set forth in **Section 2** unless agreed to in writing by the parties. The

Certificate of Substantial Completion shall be submitted to Nashville MTA and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

- (G) When the awarded task is fully complete and Contractor is ready for a final inspection, Contractor shall notify Nashville MTA in writing. Thereupon, Nashville MTA and Design Representative shall perform a final inspection of the Project. When Nashville MTA and Design Representative determine that the Project is acceptable under the Contract, Design Representative shall promptly issue a final **Certificate for Final Payment** stating that to the best of Design Representative's knowledge, information and belief, and on the basis of Design Representative's on-site visits and inspections, the Project has been completed in accordance with the terms and conditions of the Contract. If Nashville MTA or the Design Representative, through their inspection, finds that the Construction Services are not complete pursuant to the terms of this Contract, Nashville MTA shall furnish Contractor in writing a punch list for Contractor to complete to Nashville MTA's written satisfaction and approval. If, when completing the punch list, Contractor is required to repeat all, or any portion, of the items in the punch list, Contractor shall bear the cost of such repeat inspection(s), which cost may be deducted by Nashville MTA from the Final Payment. Upon issuance of the Certificate for Final Payment and a determination by Nashville MTA that the Project is complete in full accordance with this Contract and that Contractor has performed all of its obligations to Nashville MTA under this Contract, Nashville MTA shall furnish a final approval for payment to Contractor certifying to Contractor that the Project is complete ("**Final Completion**") and Contractor is entitled to the remainder of the unpaid Project Price, less any amount withheld, including, but not limited to, Retainage pursuant to this Contract ("**Final Payment**") if the conditions in **Section 4.2.(H)** are satisfied. Acceptance of Final Payment by Contractor or Contractor's Agents constitutes a waiver of any Claims against Nashville MTA, whether or not in writing.
- (H) If Nashville MTA finds that satisfactory progress was achieved during any period for which a progress payment is to be made, Nashville MTA shall authorize payment to be made in full. However, if satisfactory progress has not been made, Nashville MTA may retain a maximum of 10% of the amount of the payment until satisfactory progress is achieved. When the work is Substantially Complete, Nashville MTA may retain from previously withheld funds and future progress payments an amount Nashville MTA considers adequate for protection of Nashville MTA and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each add-alternate of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.
- (I) If Nashville MTA reasonably believes that Final Completion will be inexcusably delayed, then Nashville MTA shall be entitled, but not required, to withhold from any amounts otherwise due Contractor an amount then believed by Nashville MTA to be adequate to recover Liquidated Damages applicable to such delays. If and when

Contractor overcomes the delay in achieving Final Completion, or any part thereof, for which Nashville MTA has withheld payment, then Nashville MTA shall promptly release to Contractor only those funds withheld, but no longer applicable, as Liquidated Damages.

(J) Prior to being entitled to receive Final Payment and as a condition precedent thereto, Contractor shall furnish to Nashville MTA and/or Design Representative, in the form and manner required by Nashville MTA, if any:

(1) An affidavit that all of Contractor's obligations to Contractor's Agents and other third parties in connection with the Project have been paid or otherwise satisfied;

(2) An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project for which Nashville MTA or Nashville MTA's property might be responsible or encumbered (less amounts withheld by Nashville MTA) have been paid or otherwise satisfied;

(3) All subcontractor utilization and payment reports;

(4) Separate release of Claims or waivers from each employee, subcontractor, laborer, materialman, supplier or other person or entity who has or might have a claim against Nashville MTA or the Payment Bond;

(5) If required by Nashville MTA, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, Claims or encumbrances arising out of the Contract;

(6) Affirmative waiver by the Contractor of any and all Claims, if any, against Nashville MTA under the Contract;

(7) A certificate evidencing that insurance required by the Contract Documents shall remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) calendar days' prior written notice has been given to the Nashville MTA;

(8) A written statement that Contractor knows of no substantial reason that the insurance will not be renewed to cover the time periods required under the Contract;

(9) All product warranties, operating manuals, instruction manuals and other record documents, drawings, including, but not limited to, as-is drawings, and things customarily required of Contractor, or expressly required in this Contract, as part of or prior to Project close-out;

(10) Approval of the Design Representative as set forth in this Contract. and

(11) Consent(s) of surety to Final Payment;

4.3. Nashville MTA shall compensate Contractor in accordance with the terms and conditions of this Contract at the compensation agreed upon in writing. Notwithstanding anything contained herein to the contrary, the Project Price maximum firm fixed price amount to be paid to Contractor for all Construction Services performed under this Contract shall not exceed the Project Price, unless Additional Services are authorized by Nashville MTA in writing.

4.4. The term “**Design Representative**” as used in this Contract shall mean the Design Representative and/or design or engineering firm or engineer or construction administration entity hired by Nashville MTA to oversee the Contractor’s responsibilities and duties under the Contract.

4.5. The Contractor may be compensated at a percentage, not to exceed ten percent (10%) for cost of work (mark-up) on Additional Services, subcontractor’s expenses and/or Change Orders with the written prior approval of MTA.

5. CONTRACTOR’S STAFFING AND PERSONNEL

5.0. Contractor represents that it employs skilled labor with the expertise to perform the Construction Services and possesses sufficient quantities of labor, equipment and materials for the timely performance of the Construction Services. Furthermore, Contractor has adequate resources to fully perform and complete the Construction Services. Contractor is familiar with the Project site and its conditions and has visited and inspected the site. Contractor is responsible for supervising the performance of the Construction Services, including that of its subcontractors. Furthermore, Contractor is responsible for coordinating the work of all trades on the Project, including its subcontractors and any MTA contractors. Contractor has control over and sole responsibility for the means and methods of construction used to perform the Construction Services, except where otherwise specified in the Contract.

5.1. Contractor shall assign only competent and qualified personnel and staff to perform the Construction Services as set forth in this Contract and shall at all times be solely responsible for the quality of the Construction Services.

5.2. In the event Contractor desires to change such key personnel from performing the Construction Services under this Contract, Contractor shall submit the qualifications of the proposed substituted personnel to Nashville MTA for prior written approval, which shall not be unreasonably withheld.

5.3. Contractor shall promptly remove any employee or subcontractor who is determined by Nashville MTA, in its sole discretion, in writing to Contractor, to be uncooperative, incompetent, a threat to the timely completion of the Construction Services, a threat to the safety of persons or property, or refuses to perform the Construction Services in accordance with the Contract. Rejection by Nashville MTA and the removal of assigned personnel shall not relieve Contractor of its full responsibilities under the Contract. Contractor shall provide written notification to Nashville MTA of any impact on the Project Schedule impacts as a result of such removal, if any.

5.4. Contractor, and Contractor's Agents, found guilty of unethical or irresponsible business practices shall be suspended and debarred from conducting future business with Nashville MTA.

5.5. Contractors and subcontractors must maintain an up-to-date System for Award Management, DUNS number, applicable Tennessee contractor's license, and any other registration databases that are required.

5.6. Contractor must submit all letters of certification of any DBEs participating on this Project.

5.7. Contractor shall comply with the applicable workers' compensation laws in the State of Tennessee and maintain workers' compensation insurance as set forth in **Section 16**. Contractor shall also require each Contractor's Agent to provide workers' compensation for all of the Contractor Agent's employees who are performing the Construction Services if such employees are not covered by Contractor, and Contractor's written agreement with each Contractor's Agents shall so specify.

5.8. Contractor shall adhere to Nashville MTA's safety requirements and security, which include, but are not limited to, OSHA/TOSHA applicable requirements, the requirement that all Contractor's Agents wear or use body and health protection equipment, wear identification badges, check in with Nashville MTA's supervisor or authorized representative on duty, and sign in and out in a logbook, when applicable, when arriving and departing Nashville MTA's property.

5.9. Contractor shall comply with the laws regarding the employment of aliens and others, so that all persons performing the Construction Services under this Contract meet the citizenship and alien status requirements contained in governmental laws, including, but not limited to, the *Immigration Reform and Control Act of 1986* as amended. Contractor shall obtain from all of its employees performing the Construction Services all verification and other documentation of employment eligibility status required by the laws as they currently exist and as they may hereafter be amended. Contractor shall retain such documentation for all covered employees for the period prescribed by law.

6. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants to Nashville MTA as follows:

6.0. Contractor is a **[INSERT TYPE OF BUSINESS ENTITY]** duly organized, validly existing and in good standing under the laws of the State of Tennessee, and has full corporate power and authority to execute, deliver and perform its obligations under this Contract, the Exhibits attached hereto, and any other agreements and instruments contemplated by this Contract. Contractor is fully qualified and has all requisite corporate power and authority to own its properties, inventory, equipment and assets, and to conduct its business as now conducted. Contractor is qualified to do business in all jurisdictions where it is required to perform

Construction Services and has and shall maintain all necessary licenses, permits and authorizations required to carry out Contractor's business for the Project.

6.1. The execution and delivery of this Contract, the Exhibits attached hereto, and the other agreements and instruments contemplated by this Contract have been duly authorized by all necessary actions of Contractor and by anyone else whose approval or authorization is required. Upon execution and delivery, this Contract, the Exhibits attached hereto, and the other agreements and instruments contemplated by this Contract shall be legal, valid and binding obligations of Contractor, enforceable against Contractor in accordance with their respective terms.

6.2. The execution and delivery of this Contract does not, and the execution and delivery of the Exhibits attached hereto and other agreements and instruments contemplated by this Contract will not, and the consummation of the transactions contemplated hereby and thereby will not: (i) violate any provisions of Contractor's charter, bylaws or other organizational documents; (ii) violate any provision of law or any order, judgment or decree of any court or other governmental or regulatory authority applicable to Contractor; (iii) violate or result in a breach of, an acceleration under, or constitute (with due notice or lapse of time or both) a default under, any contract, lease, loan agreement, mortgage, security agreement, or other agreement or instrument to which Contractor is a party or by which it is bound or to which any of Contractor's properties, inventory, or assets is subject, which would prevent Contractor from performing the Construction Services in the manner and as contemplated by and in accordance with the terms and provisions of this Contract; or (iv) result in the imposition of any liens or restrictions on Contractor's business or any properties and inventory, including goods and services, thereof.

6.3. There is no litigation pending or threatened against or relating to Contractor which could materially or adversely affect the Construction Services under this Contract.

6.4. There is not now and will not be at the delivery of the Construction Services to Nashville MTA any damage, destruction or loss not covered by Contractor's insurance which could materially or adversely affect the Construction Services, it being expressly agreed that the risk of loss of the Construction Services shall remain with Contractor until acceptance of the delivery of such Construction Services upon Final Payment by Nashville MTA.

6.5. Contractor shall have and convey at delivery good and marketable title to all of the goods and services encompassing the Project free and clear of all liens, pledges, security interests and encumbrances.

6.6. Contractor and Contractor's Agents shall at all times be in compliance with all applicable local, state and federal laws and regulations and exercise all necessary precautions for the safety of others and the conditions under which the Construction Services are performed.

6.7. Contractor has received, reviewed and carefully examined all of the documents which make up this Contract and finds them to be generally sufficient to indicate and convey understanding of the terms and conditions for implementation and completion of this Project.

6.8. Contractor is not insolvent nor has it filed or had filed against it any proceeding in bankruptcy or for reorganization under any federal bankruptcy law or similar state law, nor has any receiver been appointed for all or a substantial part of Contractor's assets or business, nor has it made any assignment for the benefit of creditors, nor has it entered into any other proceeding for debt relief. Contractor's business is viable, sound, and operating normally, and there have been no material adverse changes in its business since the date of Contractor's RFQ Proposal.

The foregoing representations and warranties of Contractor in this **Section 6** are made with the knowledge and expectation that Nashville MTA is placing complete reliance on such representations and warranties in entering into this Contract and such representations and warranties shall survive the delivery and acceptance of the Construction Services to and by Nashville MTA.

7. TAXES.

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

8. INTELLECTUAL PROPERTY INFRINGEMENT.

8.0. 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 Construction Services or other work products furnished infringe a copyright, trademark, service mark, or patent or any other intellectual property right. The Contractor shall further indemnify and hold harmless the Covered Entities to the fullest extent permitted by law, and as set forth in **Section 19**, against any award of damages and costs made against the Covered Entities, or any settlement of Claim authorized in writing by Nashville MTA.

8.1. If the Construction 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:

8.1.1. Procure for Nashville MTA the right to continue using the products or services.

8.1.2. 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.

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

8.1.4. Provided, however, that Contractor will not exercise the option under 9.1.3 until Contractor and Nashville MTA have agreed and determined that the options under both 9.1.1 and 9.1.2 are impractical.

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

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

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

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

8.3 Nothing in this **Section 8** precludes Nashville MTA from exercising any rights or remedies as provided elsewhere in this Contract.

9. DEFAULT, TERMINATION AND SUSPENSION

9.0. 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**”), then Nashville MTA shall have the right to terminate this Contract provided Contractor fails to cure such Default within ten (10) calendar 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.

9.0.1. In the event a termination for Default is held to be wrongful, Contractor’s sole and exclusive remedy shall be the amount Contractor would be owed if the termination had been for Nashville MTA’s convenience as set forth below.

9.0.2. In the event of Default by Contractor, Nashville MTA shall be entitled to all of its damages, reasonable expenses, and costs, including, but not limited to its reasonable attorneys’ fees incurred because of such Default.

9.1. 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.

9.2. Nashville MTA may terminate this Contract, in whole or in part, at any time, without penalty, for its convenience or its best interest upon thirty (30) days’ written notice to Contractor.

9.3. In the event of a termination under **Section 9.1.** or **Section 9.2.,** Contractor shall be entitled to compensation for satisfactory, authorized Construction Services completed and accepted as of the notice of termination, but in no event shall MTA be liable to Contractor for compensation for any service which has not been rendered. Additionally, Contractor shall immediately stop work upon receipt of notice, secure any work site, aid in the transition of the site and take reasonable steps to minimize costs.

9.4. If Contractor has any property in its possession belonging to Nashville MTA as of the notice of termination, Contractor shall account for such property, and dispose of it in the manner as directed by Nashville MTA.

9.5. Nashville MTA may suspend Contractor's continued performance for its convenience, for up to ten (10) calendar days at any one time, by providing written notice to Contractor. Contractor shall not be entitled to any additional payments as a result of such suspension. The extension of ten (10) calendar days will be added to the Project Schedule or Recovery Schedule, if applicable, if this option is exercised.

9.6. Nashville MTA's remedies under this Contract for any Default are non-exclusive and cumulative. Nashville MTA's election of a remedy shall not in any way operate to preclude Nashville MTA from also pursuing all available remedies against Contractor and its sureties for any Default.

10. TITLE WARRANTY

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

10.1. Contractor, at its own expense, 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 Construction Services or other work products furnished infringe or violate the Contractor's title warranty in **Section 10.0.** and any trademark, patent, copyright, or other intellectual property right. In the event the use of the Construction Services are restricted or interfered with as a result of such infringement or violation, Contractor and Nashville MTA shall have the same rights and responsibilities as set forth in **Sections 8 and 19.**

10.2. Nothing in this **Section 10** precludes Nashville MTA from exercising any rights or remedies as provided elsewhere in this Contract.

11. MAINTENANCE OF RECORDS

11.0. Contractor shall maintain documentation for all charges against Nashville MTA. The books, records, and documents of Contractor, insofar as they relate to Construction Services performed or money received under this Contract, shall be maintained for a period of seven (7) years following the date of Final Payment by Nashville MTA and will be subject to audit, at any reasonable time and upon reasonable notice by Nashville MTA or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.

11.1. Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the U.S. Department of Transportation, the Comptroller General of the United States General Accounting Office, the Tennessee State Attorney General's office, and Nashville MTA or their duly appointed representatives.

11.2. 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 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.

11.3. 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 Construction Services. Contractor shall treat any such data and information as strictly confidential.

11.4. Records pertaining to appeals under disputes, to litigation or to the settlement of Claims arising under or relating to the performance of the Contract shall be made available for seven (7) years after the Commencement of Work Date or until disposition of the appeals, litigation, or Claims, whichever is later.

11.5. Contractor shall include, or have included, the requirements of this **Section 11** in all subcontracts of any tier.

12. MODIFICATION OF CONTRACT

12.0. Contractor must contact Nashville MTA to request any changes to this Contract. This Contract may be modified only by written amendment or Change Order as set forth in **Sections 1, 12 and 24**.

12.1. In the event an alteration or modification in the character of the Construction Services or deliverables results in a change in this Contract, thereby materially increasing or decreasing the scope of Construction Services, cost of performance, or the Project Schedule, the Construction Services or deliverable will nonetheless be performed as directed by Nashville MTA. However, before any altered or modified Construction Services begin, a Change Order or amendment must be approved and executed by Nashville MTA and Contractor.

12.2. Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to Contractor may accordingly be adjusted by mutual written agreement of the parties.

12.3. No Claim for extra work done or materials furnished by Contractor will be allowed by Nashville MTA except as provided herein, nor will Contractor perform any Construction Services or furnish any materials not covered by this Contract unless such Construction Services or materials are first authorized in writing by Nashville MTA. Construction Services or materials furnished by Contractor without such prior written authorization shall be Contractor's sole jeopardy, cost, and expense, and Contractor hereby

agrees that without prior written authorization, no Claim for compensation for such Construction Services or materials furnished will be made.

12.4. Contractor shall notify Nashville MTA of any proposed changes within ten (10) calendar days of discovering the circumstances that could constitute a change. Contractor waives the right to request any adjustment to the Contract from a change which is not made known to Nashville MTA in writing within such ten (10) calendar day period.

12.5. Contractor shall immediately comply with and strictly adhere to all written instructions and directions given by Nashville MTA (whether or not Contractor disputes or questions such instructions or directions), except to the extent (a) such instruction or directives would constitute a violation of applicable law or (b) Contractor reasonably believes that compliance with such instructions or directions would cause safety hazards to any person or the environment. If Contractor believes that any Nashville MTA instruction or directive constitutes a change to the Contract, Contractor shall provide written notice as required herein, and if no such notice is given, Contractor waives any Claim that such instruction constituted a change in the Contract. If Contractor disputes any instruction or direction of Nashville MTA, such dispute shall be resolved in accordance with **Section 21**. However, Contractor shall comply with all written instructions and directions received from Nashville MTA and shall continue to perform the Construction Services pending the submission of a Claim and the resolution of any resulting dispute.

13. PARTNERSHIP/JOINT VENTURE

13.0. 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 Contractor's Agents, 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 in the performance of this Contract nor shall the doctrine of respondent superior be applicable to the Covered Entities through this Contract. None of the parties hereto shall hold itself out in a manner contrary to the terms of this **Section 13** nor shall Covered Entities or Contractor become liable for any representation, act or omission of any other party contrary to the terms of this **Section 13**.

13.1. Neither Contractor nor Contractor's Agents are Nashville MTA employees. Contractor shall bear sole responsibility for payment of compensation to Contractor's Agents.

14. WAIVER

14.0. No action or failure to act by Nashville MTA, shall constitute a waiver of any right or duty afforded Nashville MTA under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach or Default hereunder, except as may be specifically agreed in writing.

14.1. To the extent a waiver occurs by written agreement, such waiver shall not, in any way, be considered a waiver of a subsequent obligation, or the relinquishment of the right to subsequently demand strict performance or exercise such rights set forth in the Contract which shall continue unchanged and remain in full force and effect.

14.2. No waiver of any provision of this Contract shall affect the right of Nashville MTA thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other Default.

15. EMPLOYMENT AND NONDISCRIMINATION

15.0. In performance of this Contract, Contractor's Agents are prohibited from discriminating against any individual due to race, creed, color, national origin, disability, age, religion or sex and from violating any applicable laws concerning the employment of individuals with disabilities. It is the policy of Nashville MTA not to discriminate on the basis of age, race, creed, religion, 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 this Contract, Contractor certifies and warrants that it will comply with this policy and will include this policy in all subcontracts. All solicitations or advertisements for Contractor's Agents placed by or on behalf of Contractor, shall state that all qualified applicants will receive consideration for employment without regard to age, race, sex, color, national origin, creed, religion, and disability.

15.1. Contractor and Contractor's Agents 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.

15.2. Violation of these Contract provisions may result in suspension or debarment if not resolved in a timely manner to the satisfaction of Nashville MTA.

16. INSURANCE AND SURETY BONDS

16.0. Contractor shall have and maintain insurance in accordance with the requirements set forth herein and in **Exhibit B**. The required certificates of insurance must be provided by Contractor and approved by Nashville MTA before the Notice to Proceed can be issued and before Contractor can commence performance of the Project. Coverage shall remain in effect through any Warranty Period or other Contractual period for correcting defective work or the applicable statute of repose.

16.1. Contractor shall furnish separate performance and payment bonds to Nashville MTA with this Contract, as applicable to the Project per awarded task order. Each bond shall set forth a penal sum in an amount not less than the Project Price. Each bond furnished by Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Project Price is adjusted by the execution of a Change Order, the penal sum of both the performance bond and the payment bond shall be deemed adjusted by like amount without consent of the surety. The performance and payment bonds furnished by Contractor shall be in a form suitable to Nashville MTA and shall be executed by a surety, or sureties, licensed to do

business in Tennessee and reasonably acceptable to the Nashville MTA. Bonds shall be accompanied by a power of attorney indicating that the person executing the bond is doing so on behalf of the surety. The power of attorney shall have been conferred upon the attorney-in-fact prior to the date of the bond. The power of attorney shall show the date of appointment of the attorney-in-fact and that the appointment and powers have not been revoked and remain in effect.

16.2. Contractor may, subject to Nashville MTA's written approval, at Contractor's sole cost and expense, substitute securities equivalent to and in lieu of any moneys withheld by Nashville MTA to insure performance under this Contract. Such security shall be deposited with a state or federally chartered bank as escrow agent, who shall pay such moneys as provided herein to Contractor upon Final Payment as certified to such bank in writing by Nashville MTA. Nashville MTA shall be the beneficiary of any security substituted for moneys withheld and shall receive any accrued interest thereon. No such substitution shall be accepted until forms of security and any other documentation related to such substitution are reviewed and found acceptable by Nashville MTA.

17. CONTINGENT FEES

17.0. Contractor hereby represents that Contractor has not been retained or retained any persons to solicit or secure a Nashville MTA 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. Breach of the provisions of this **Section 17** 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 Nashville MTA contracts.

18. ETHICAL STANDARDS

18.0. 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 of 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 solicitation or proposal therefore.

18.1. 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.

18.2. Breach of the provisions of this **Section 18** 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.

19. INDEMNITY AND CONTRACTOR RESPONSIBILITY

19.0. Contractor agrees to defend, indemnify 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 (the “**Covered Entities**”) from:

19.1. 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 Construction Services performed under this Contract, and/or from the 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,

19.2. Any Claims arising from any failure of Contractor or Contractor’s Agents, to observe applicable laws, including, but not limited to, workers’ compensation, labor laws and minimum wage laws. Contractor’s indemnification for these Claims is not limited to any statutory limitations on employer liability.

19.3. The indemnity in this **Section 19** 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.

19.4. Contractor assumes full responsibility for the Construction 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 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 Construction 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.

19.5. In the event of any third-party Claim against the Covered Entities, the Covered Entities shall 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 any settlement must be approved by the Covered Entities in writing.

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

20. SUBCONTRACTORS

In addition to the other requirements of Contractor set forth herein regarding subcontractors and Contractor's Agents:

20.0. Contractor and its subcontractors shall be licensed as required in the State of Tennessee to perform the Construction 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 government letters or certification of any Disadvantaged Business Enterprises ("DBEs") participating in the Project. Contractor is fully responsible for all of the Construction Services that are performed by any subcontractor.

20.1. Contractor shall not subcontract any of its rights or responsibilities in this Contract without the prior written approval of Nashville MTA. Subcontractors, if approved in writing by Nashville MTA, shall be made subject to the applicable terms of this Contract in their contractual agreements with the Contractor. Notwithstanding the foregoing, subcontractors included in Contractor's proposal dated _____ are deemed approved. Non-professional, temporary personnel agencies and vendors of standard materials and supplies are not considered subcontractors for purposes of this **Section 20** only.

20.2. 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 the indemnification provision as set forth in **Section 19** running from each subcontractor directly to the Covered Entities.

20.3. 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.

20.4. Contractor shall remain fully responsible for the Construction Services of the subcontractor and for supervising the performance of the Construction 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, and Contractor shall so notify subcontractors in its written agreement with subcontractors.

21. REMEDIES AND DISPUTES

21.0. No remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Contract, now or in the future existing at law or in equity or by statute or otherwise.

21.1. In no event shall Nashville MTA be liable or responsible for payment of 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. Any default or breach by Nashville MTA is limited to its failure to perform certain contractually mandated obligations, such as non-payment.

21.2. The parties agree that any failure of Contractor to attain Final Payment per awarded task order before the expiration of the Term as set forth in **Section 2.0** of this Contract will cause damage to Nashville MTA. Since the amount of said damages for delay are difficult to determine, the parties agree that the amount of such damages due Nashville MTA for such delay shall be fixed at \$186 Amount (“**Liquidated Damages**”) for each day after the agreed upon completion of each task. Contractor agrees to pay Liquidated Damages in said amount and agrees that said Liquidated Damages do not constitute a penalty. Nashville MTA may deduct the amount of the Liquidated Damages from any money due Contractor under the Contract. Nashville MTA shall have the right to pursue the collection of Liquidated Damages as with any other remedy. The Liquidated Damages provided in this **Section 21.2** apply only to Claims for delays pursuant to this Contract and do not apply or limit any other damages, rights or remedies Nashville MTA may have for other Claims and Default, including, but not limited to, bodily injury, real property damage, infringement, breach of warranty, or for any other damages that may be suffered by Nashville MTA arising out of this Contract or Contractor or Contractor’s Agents’ failure to perform or Default. Contractor shall not be held liable for any delays caused by Nashville MTA, so long as Contractor gives timely notice to Nashville MTA that it maintains that Nashville MTA caused the delay and Nashville MTA acknowledges in writing that it is the cause of said delay.

21.3. Nashville MTA retains the right to supplement the Construction Services and/or replace Contractor if Contractor is in Default. Nashville MTA’s related cost and expense for such supplementation or replacement shall be credited to reduce the remaining Contract balance owed Contractor, if any, after consideration of Nashville MTA’s additional damages.

21.4. In the event of 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 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.

21.5. Any disputes arising in the performance of this Contract, which are not resolved by agreement of the parties (“**Dispute**”), shall be decided in writing by Nashville MTA. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy of the written decision of Nashville MTA, Contractor mails or otherwise furnishes a written appeal to Nashville MTA. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Nashville MTA of the appeal shall be binding upon Contractor and Contractor shall abide by the decision.

21.6. Unless otherwise directed by Nashville MTA, Contractor shall continue performance under this Contract during the pendency of any Dispute.

21.7. Unless this Contract specifically provides otherwise, all Claims, counterclaims, and other matters in question between Nashville MTA and 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 in Davidson County within the State of Tennessee.

22. NOTICES

22.0. Any notice or other communication to be made pursuant to this Contract shall be made in writing and hand delivered by messenger service or delivered by a nationally recognized overnight courier, and shall be effective upon receipt. 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. Electronic mail may be used to expedite communications but shall not be notice under this Contract unless confirmed in writing that such electronic mail serves as notice by the recipient party.

Notices to:

Procurement Department
Nashville Metropolitan Transit Authority
430 Myatt Drive
Nashville, Tennessee 37115
Attn: Matt Taylor
Email: Matthew.Taylor@Nashville.gov

Notices to Contractor:

Contractor name
Contractor Address
City, State Zip Code
Attn: Name
Email:

23. ASSIGNMENT - CONSENT REQUIRED

23.0. 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. 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, except that in the case of an assignment of compensation due to Contractor, Contractor may assign such right to compensation upon the written consent of Nashville MTA, which shall not be unreasonably withheld. Any such assignment or transfer shall not release Contractor from its obligations hereunder.

23.1. Any public agency (i.e., city, district, public authority, 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 portion of the goods and services awarded under this Contract. This assignment, should it occur, shall be agreed to in writing by Nashville MTA. Once assigned, each agency will enter into its own contract and be solely responsible to Contractor for obligations for the goods and services assigned. Nashville MTA's right of assignment will remain in force until Final Payment. Nashville MTA shall incur no financial responsibility in connection with contracts issued by another public agency. The public agency shall accept sole responsibility for placing orders or payments to Contractor.

24. ENTIRE CONTRACT

24.0. 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.

24.1. 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.

25. FORCE MAJEURE

25.0. Subject to the provisions of **Section 3.2.**, no party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant 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 nature beyond its control.

25.1. In the event of Force Majeure, the Contract shall not be revoked nor shall Contractor be penalized for such noncompliance so long as Contractor complies with **Section 3.2.** and provided that Contractor shall use its best efforts to remove the cause of delay and resume work as soon as possible.

26. GOVERNING LAW AND VENUE

26.0. 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.

26.1. 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.

27. SEVERABILITY

27.0. If any provision of this Contract is properly determined to be illegal, invalid or unenforceable, the other provisions of this Contract shall remain in full force and effect, and such illegal, invalid or unenforceable provision shall be automatically modified in such a manner so as to make it valid, legal and enforceable but keeping it as close to its original meaning as possible.

28. EFFECTIVE DATE

28.0. This Contract shall not be binding upon the parties until it has been signed first by Contractor and then by Nashville MTA. When it has been so signed and filed, this Contract shall be effective as of the date signed by Nashville MTA.

29. COUNTERPARTS

29.0. 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.

30. MONITORING

30.0. Nashville MTA and Design Representative shall at all times have access to the Construction Services wherever they are being performed, prepared or in progress. Contractor shall provide safe access to all facilities to enable Nashville MTA and Design Representative to perform its functions and responsibilities under the Contract, and shall provide access for authorized representatives of Nashville MTA and the funding sources (e.g. Federal Transit Administration, Tennessee Department of Transportation, and Federal Railroad Administration) for the purpose of inspecting the work. Nashville MTA and Design Representative shall have the right to obtain or take photographs.

31. NASHVILLE MTA PROPERTY AND DATA

31.0. 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 Nashville MTA by Contractor upon termination of this Contract. All goods, documents, records and other work product and property produced during the performance and as a consequence of this Contract are deemed to be Nashville MTA property.

31.1. 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.

32. CONTRACTING OFFICER

32.0. Nashville MTA's Contracting Officer is the individual with the delegated authority to administer this Contract on behalf of Nashville MTA. The Contracting Officer is solely responsible, under direction from Nashville MTA, for authorizing services by issuing written orders, and for making any changes to the scope of Construction Services, the Project Schedule or other contractual terms and conditions by written contract modification executed by the CEO of

Nashville MTA or the CEO's designee. No oral representations of any nature form the basis of or may amend the Contract. The Contracting Officer shall be considered the authorized representative of Nashville MTA, except for modifications of the Contract as provided in **Section 12**.

32.1. The Contracting Officer may delegate certain specific responsibilities to other staff members of Nashville MTA, and if such delegation occurs, Contractor will be notified in writing of the responsible person and his or her duties.

32.2 This Contracting Officer for this Project will be:

Matt Taylor
Matthew.Taylor@Nashville.gov
Procurement Administrator
Nashville MTA
430 Myatt Drive
Nashville, TN 37115

32.3 The term "**Project Manager**" as used in this Contract shall mean the person designated to oversee the Construction Services.

32.4. Any and all written communications shall make reference to the Contract number and shall be mailed and emailed to the above address.

33. CONTRACTOR'S LICENSE

33.0. Contractor swears, affirms and represents that it has complied with all the provisions of Contractors Licensing Act of 1994 of the State of Tennessee, the same being set out in Tennessee Code Annotated, 62-6-101 et seq., and that it is licensed by the State Board of Licensing Contractors. Said Board is authorized to receive complaints relative to Contractor's professional conduct. Contractor's license number is [INSERT LICENSE NO.] and the date of expiration is [INSERT DATE], and that part of the classification applying to this Contract is BC; MU-A, B, C, D; HRA.

34. PREVAILING WAGE RATE

34.0. Contractor shall not pay less than the prevailing wage rate for all types and classifications for any work performed under this Contract, such rates being those established for Davidson Counties by the United States Department of Labor under 42 U.S.C. § 276 (a) (Davis-Bacon Act). A source for the prevailing wage rates is located at SAM.gov. Contractor acknowledges and agrees to use the current prevailing wage rates. The prevailing wage rates must be posted at the Project job site. Failure to pay the prevailing wage rate is a material breach of this Contract.

35. VETERANS EMPLOYMENT HIRING PREFERENCE

35.0. Nashville MTA and its subrecipients are recipients of federal financial assistance on this Contract. Contractor shall give a hiring preference, to the extent practicable, to veterans, as such term is defined in 5 U.S.C.A. § 2108, who have the requisite skills and abilities to perform the Construction Services required under this Contract. This **Section 35** shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

36. PUBLICATION AND MEDIA RESTRICTIONS

36.0. Contractor shall not publish or reproduce any subject matter regarding the Construction Services in whole or in part, or in any manner or form, without the advance written consent of Nashville MTA, unless Nashville MTA has released or approved the release of that data to the public.

37. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

37.0. Since the Contract Documents are complementary, before starting each portion of the Project, Contractor shall carefully study and compare the various drawings and other Contract Documents relative to that portion of the Project, as well as the information furnished by Nashville MTA, shall take field measurements of any existing conditions related to that portion of the Project and shall observe any conditions at the site affecting that portion of the Project. These obligations are for the purpose of facilitating construction by Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by Contractor shall be reported promptly to the Design Representative and Project Manager as a request for information in such form as the Design Representative or Project Manager may require.

38. WARRANTY

38.0. Contractor shall be responsible for using due diligence to correct errors, deficiencies or unacceptable Construction 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 ten (10) days of Contractor's receipt of written notice of said errors, deficiencies or unacceptable Construction Services. For the Warranty Period, as defined below, Contractor's obligation shall be to replace, resolve or correct, at Contractor's own expense, any defects in the Construction Services.

38.1. Warranty Period is defined as a period of twelve (12) months beginning on the date of Final Payment, continuing until Contractor has remedied all problems of which Contractor was notified prior to expiration of the warranty period ("**Warranty Period**"). All manufacturer and subcontractors' warranties along with supporting documentation thereof shall be delivered to Nashville MTA.

38.2. If during the Term and applicable Warranty Period any Construction Services do not operate in all material respects as specified in the Contract, Nashville MTA shall be entitled to terminate this Contract for Default in accordance with the terms and conditions of this Contract and shall be entitled to remedies set forth in **Section 21** including, but not limited to, a full refund for any such defective Construction Services.

38.3. Contractor warrants to Nashville MTA that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract, that the Project will be free from defects not inherent in the quality required or permitted, and that the Project will conform to the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by Design Representative, Contractor shall furnish satisfactory evidence as to the kind and quality of material and equipment.

38.4. Any rights and responsibilities of the parties in this **Section 38** shall survive any termination of the Contract.

39. DOCUMENTS AND SAMPLES AT THE SITE

39.0. Contractor shall maintain at the site for Nashville MTA one copy of the Project drawings, specifications, addenda, Change Orders and other modifications, in good order and marked currently to record field changes and selections made during construction, and one set record copy of approved Shop Drawings, Product Data, Samples, all as defined herein, and similar submittals required by the Contract Documents (collectively, the “**Submittals**”). The Submittals shall also be available to the Design Representative and Project Manager and be delivered to Nashville MTA upon Final Completion.

39.1. “**Shop Drawings**” are drawings, diagrams, schedules and other data specially prepared for the Project by Contractor, or Contractor’s Agents to illustrate some portion of the Project.

39.2. “**Product Data**” are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Project.

39.3. “**Samples**” are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Project will be judged.

39.4. The purpose of the Submittals is to demonstrate the way by which Contractor proposes to conform both to the information given and to the design concept expressed in the Contract Documents.

39.5. Contractor shall review the Submittals for compliance with the Contract Documents. If the Submittals are compliant with the Contract Documents, Contractor shall, with reasonable promptness, and in such sequence as to not delay the Construction Services, the activities of Nashville MTA or of separate contractors, approve and submit the Submittals to the Design

Representative. The Submittals which the Contractor has not marked as reviewed for compliance with the Contract Documents or approved by Contractor may be returned to Contractor by the Design Representative without action.

39.6. By approving and submitting the Submittals to Design Representative, Contractor represents that Contractor has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such Submittals with the requirements of the Project and of the Contract Documents.

39.7. Contractor shall perform no portion of the Project for which the Contract Documents require submittal and review of the Submittals until the respective Submittals have been approved by Design Representative.

40. PARTIAL OCCUPANCY OR USE

40.0. Nashville MTA may occupy or use any completed or partially completed portion of the Project at any stage when such portion is designated by separate written agreement with Contractor, provided such occupancy or use is approved by the authorized public authorities having jurisdiction over the Project (“**Partial Occupancy or Use**”) and the authorized representatives of Nashville MTA, including the Design Representative.

41. USE OF SITE

41.0. Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract, and shall not unreasonably encumber the site with materials or equipment.

42. CLEANING UP

42.0. Contractor shall keep the site premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At Final Completion, Contractor shall remove from and about the Project waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus materials.

42.1. If Contractor fails to clean up as provided in the Contract Documents, Nashville MTA may do so and the cost thereof shall be charged to Contractor, which cost shall be due and payable to Nashville MTA upon demand or may be deducted from the Final Payment.

43. COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

43.0. All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F and the FTA contract clauses in the RFQ 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 if not complied with 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.

43.1. Contractor represents and warrants that the Construction 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 and hold harmless, to the fullest extent permitted by law, Nashville MTA for any breach of this representation.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on the date and year first above written.

Nashville Metropolitan Transit Authority

Contractor

Stephen G. Bland, Chief Executive Officer

Signature

Name

Title

Date

Date

EXHIBIT A

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.

EXHIBIT B

INSURANCE REQUIREMENTS

1. GENERAL CONSIDERATIONS

Contractor agrees to the indemnity obligations set forth in the Contract Documents. Nashville MTA reserves the right to participate in the defense of any claim or action that is brought against Nashville MTA as set forth in **Section 20**.

To insure compliance with Nashville MTA’s requirements, Nashville MTA requires each Contractor to carry adequate insurance coverage with a company or companies acceptable to said Nashville MTA.

2. INSURANCE REQUIREMENTS

A. **MINIMUM LIMITS OF COVERAGE** – Coverage shall be at least to the following minimum limits if checked as provided herein. If Contractor has or obtains primary and umbrella excess policies, there shall be no gap between such policies.

GENERAL LIABILITY

| | | | |
|-----|---|-------------|------------------------------|
| (a) | Comprehensive General Liability | | |
| | Bodily Injury | \$1,000,000 | Ea. Occurrence |
| | | \$1,000,000 | Aggregate Per Project |
| | Property Damage | \$1,000,000 | Ea. Occurrence |
| | | \$1,000,000 | Aggregate Per Project |
| | (or) Combined Single Limit | \$1,000,000 | Per Occurrence Per Project |
| (b) | Premises and Operations Liability | | same limits as in (a) above. |
| (c) | Products and Completed Operations Liability | | same limits as in (a) above. |
| (d) | Contractual Liability | | same limits as in (a) above. |

AUTOMOBILE LIABILITY

| | | | |
|-----|---|-------------|----------------|
| (e) | Comprehensive Automobile Liability (all owned, hired and non-owned) | | |
| | Bodily Injury | \$1,000,000 | Ea. Person |
| | | \$1,000,000 | Ea. Occurrence |
| | Property Damage | \$1,000,000 | Ea. Occurrence |
| | | \$1,000,000 | Aggregate |
| | (or) Combined Single Limit | \$1,000,000 | Per Occurrence |

WORKERS COMPENSATION AND EMPLOYER'S LIABILITY

| | | | |
|-----|---|-----------------------------------|----------------|
| (f) | Worker's Compensation (including compliance with the Jones Act and Longshoremen's and Harbor Worker's Act as applicable) Employer's Liability | Statutory Amount \$100,000 | Ea. Occurrence |
| (g) | Builder's Risk Insurance | \$(Value of Structure) | |
| (h) | Other Insurance | \$(As Required) | |

B. Check if Required:

GENERAL LIABILITY

a. Comprehensive (Commercial) General Liability:
Contractor shall have and maintain such Bodily Injury Liability Insurance and Property Damage Liability Insurance as shall protect Contractor from Claims for Bodily Injury and Property Damage arising from Contractor's Construction Services under the Contract, whether such operations are conducted by Contractor or Contractor's Agents. The Bodily Injury Liability Insurance shall pay on behalf of the Insured, or Additional Insured, as applicable, all sums up to the limits provided by the policy which the Insured, or Additional Insured, as applicable, shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by a person other than an employee of Contractor and caused by any occurrence. The Property Damage Liability Insurance shall pay on behalf of the of the Insured, or Additional Insured, as applicable, all sums up to the limits provided by the policy which the Insured, or Additional Insured, as applicable, shall become legally obligated to pay as damages because of injury to, or destruction of property, including the loss of use thereof, caused by any occurrence.

This policy shall cover liability for damage to property caused by blasting or explosion or collapse, or structural injury to any building or structure, or damage to any property below the surface of the ground (Explosion, Collapse and Underground Damage) as applicable.

b. Premises and Operations Liability:
Contractor shall have and maintain such Premises and Operations Liability Insurance as shall protect Contractor, Nashville MTA and the Covered Entities from liability resulting from the operations under the Contract by Contractor.

c. Products and Completed Operations Liability
Contractor shall provide such Products and Completed Operations Insurance as shall protect Contractor, Nashville MTA and the Covered Entities from liability arising out of the Contract and including those products involved in the work for which Contractor is responsible.

d. Broad Form Contractual Liability:
Contractor shall have and maintain such Contractual Liability Insurance as shall protect Contractor from liability resulting from the execution of the Contract by Contractor. If coverage is not provided on the blanket form basis, a copy of the policy or endorsement providing coverage for contractual liability assumed by Contractor under its Contract with Nashville MTA must be attached to the Certificate of Insurance.

AUTOMOBILE LIABILITY

(x) e. Comprehensive (Business) Automobile Liability (all owned, hired and non-owned): Contractor shall have and maintain such Comprehensive (Business) Automobile Liability (all owned, hired, and non-owned) Insurance as shall protect Contractor, and the Covered Entities for Claims arising out of the ownership, operation, maintenance and use of land motor vehicles and trailers intended for use therewith.

WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY

(x) f. Contractor shall have and maintain Worker's Compensation Insurance conforming with the requirements of the laws of Tennessee and (if the box is checked) the Jones Act () and the Longshoremen's and Harbor Workers' Compensation Act (). In case of any employee or employees are not covered by such laws of Tennessee of the Jones Act or the Longshoremen's and Harbor Workers' Compensation Act, Contractor shall provide Employers' Liability coverage for the protection of such employee or employees.

BUILDERS' RISK INSURANCE

(x) g. Builders' Risk Insurance
Contractor shall have and maintain such Property Insurance upon Contractor's entire work at the site to the completed value thereof. This insurance shall protect the Covered Entities as their interest may appear in the Construction Services and shall insure against the perils of fire and extended coverage, and shall include "all risk" insurance for the physical loss or damage including without duplication of coverage, theft, vandalism and malicious mischief. All Risk Insurance may contain the normal exclusions such as, but not limited to, flood, earthquake, mysterious disappearance, inherent vice, war and nuclear. If Nashville MTA requires coverage for flood or earthquake, specific requirements concerning same are set out hereafter in these specifications. If the Property Insurance contains a co-insurance provision, Contractor shall be responsible for the amount of insurance satisfying the co-insurance amount so as to make the co-insurance clause inoperable. If not covered otherwise, Contractor shall have and maintain during the life of the Contract similar Property Insurance on portions of the work stored off the site or in transit when such portions of the work are to be included in any payment. The Covered Entities, in addition to being Additional Insureds as required above, shall be loss payees.

() h. Other Insurance:

C. ADDITIONAL INSURANCE REQUIREMENTS:

1. The Certificate of Certificates of Insurance shall contain the following provision, to-wit:

The coverage provided shall not be canceled, reduced in coverage, or allowed to lapse unless and until Nashville MTA receives at least thirty (30) calendar days' advance written notice of same. Said written notice must be delivered to the Contracting Officer and the Director, Insurance and Safety Division, at his office shown as the address of the Certificate Holder below.

2. () If this box is checked, each of the said policies set out above may contain a deductible feature not in excess of \$_____ per occurrence. If a deductible feature is provided in a policy or policies, Contractor shall be liable for said amount of any claim or loss.
3. During the performance and up to the date of Final Payment, Contractor must effect and maintain

insurance hereafter checked as required. The insurance policies in the amounts set forth below shall be primary policies and the insurance companies shall be licensed to do business in Tennessee. Any excess over one million dollars (\$1,000,000) policy may be with either a licensed or non-admitted company provided the non-admitted company is: (1) listed as approved to do business in Tennessee by the Tennessee Department of Insurance, (2) has a Best financial rating of A minus or better, with a policyholder surplus of Roman Numeral X or better, and (3) otherwise acceptable to Nashville MTA.

4. All Comprehensive General Liability policies, Comprehensive Automobile Liability policies and Property Damage policies shall be endorsed to include Nashville MTA and the Covered Entities, defined in **Section 20** of the Contract, as Additional Insureds and this shall be noted on the Certificates of Insurance.
5. All policies must be of the standard form of coverage as filed with and approved by the Commissioner of Insurance for the State of Tennessee or otherwise authorized. Contractor shall not commence work under the Contract until it has obtained all insurance coverages required under this Contract and such insurance has been approved in writing by Nashville MTA.
6. Contractor is required to cover its Contracting Agents, including its subcontractors, with Comprehensive (Commercial) General Liability insurance.
7. The limit "Ea. Person" is the monetary limit applied to each person injured in a given occurrence. The limit "Ea. Occur" is the limit of the total liability for Claims, subject to the limit for "Ea. Person," from one common cause. The word "Aggregate" is the limit of the total liability for all damage of the specified coverage for each annual term of the insurance policy.
8. Contractor is required to have a CERTIFICATE of INSURANCE properly executed by an insurance company or insurance companies authorized to do business in the State of Tennessee.

APPENDIX A

DAVIS BACON RATES

NOTICE TO BIDDERS: DAVIS BACON RATES ARE PROVIDED FOR INFORMATION PURPOSES ONLY

BIDDER IS RESPONSIBLE FOR VERIFYING DAVIS BACON RATES BY USING:

<https://sam.gov/content/home> - WAGE DETERMINATIONS

CONTRACTOR MUST PAY APPLICABLE DAVIS BACON RATES THROUGHOUT THE TERM OF THE CONTRACT; CONTRACTOR IS ADVISED THAT RATES MAY CHANGE DURING THE CONTRACT TERM.