



REQUEST FOR PROPOSAL

SUBJECT: On-Call Services for Rail System Track and Facility Maintenance

DATE: October 19, 2022

PROPOSAL NO.: 23-07

PROPOSAL DUE: December 1, 2022 @ 10:00 a.m. Local Time

The Memphis Area Transit Authority invites Proposals for on-call services for rail system track and facility maintenance set forth above in accordance with the specifications enclosed herewith.

*Proposals **MUST** be received at MATA by the date and time set forth above.*

Sincerely,

A handwritten signature in black ink that reads "Shelia Maclin".

**Shelia Maclin
Manager of Purchasing**

COMMON PROBLEMS WITH PROPOSAL SUBMITTAL

- **Missing or unsigned copies of certain forms and certifications. The following must be included in the proposal:**
 - **Addenda Acknowledgement Form**
 - **Affidavit of Non-Collusion (Exhibit I)**
 - **Buy America Certificate (Exhibit II)**
 - **Certification of Primary Participation Regarding Debarment, Suspension, and Other Responsibility Matters (Exhibit III)**
 - **Certification of Lower-Tier Participants (Subcontractors), Debarment, Suspension, Ineligibility and Voluntary Exclusion (Exhibit III)**
 - **Certification of Restrictions on Lobbying (Exhibit IV)**
 - **Certification of Utilization of Disadvantaged Business Enterprises**
 - **Letter of Intent to Perform as a DBE Subcontractor**
 - **Schedule of DBE Participation**
 - **Explanation of "No Response"**
 - **Cost Proposal Form**

- **Incomplete or outdated information on client references and/or sufficient number of references provided.**

- **Submittal of too few copies. The RFP specifies the number of originals and number of copies of the bid to be provided.**

- **Failure to include adequate documentation about the role of subcontractors in the project.**

- **Failure to properly label the bid package with bid label.**

- **Proposal received late. All proposals must be in MATA's possession by the deadline shown in the proposal. All proposals received after the deadline will be returned unopened.**

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SECTION D UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISE

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MEMPHIS AREA TRANSIT AUTHORITY

LEGAL NOTICE TO PROPOSERS

Proposals will be received by the Memphis Area Transit Authority (MATA) at its Purchasing Offices, 1330 Levee Road, Memphis, TN 38108, until 10:00 a.m., local time on December 1, 2022, for furnishing the following:

On-Call Services for Rail System Track and Facility Maintenance

MATA hereby notifies all Proposers that in regard to any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit Proposals in response to this advertisement and will not be discriminated against on the grounds of race, color, sex, religion, political affiliation or national origin in consideration of an award.

Any name appearing on the Comptroller General's list of ineligible contractors is not an eligible Proposer. The contractor will be required to comply with all applicable Equal Employment Laws and Regulations.

Further information and proposal requirements may be obtained by contacting, Shelia MacIn, Manager of Purchasing at 901-722-7102.

Award of the contract will be made on the basis of the lowest and best proposal as selected by the Authority, provided it is in their best interest to do so.

The Memphis Area Transit Authority reserves the right to reject any and all Proposals, and to waive any informality in proposals.

**GARY ROSENFELD
CHIEF EXECUTIVE OFFICER**

October 19, and November 10, 2022

SECTION A
INSTRUCTIONS TO PROPOSERS

SECTION A

INSTRUCTIONS TO PROPOSERS

1.0 GENERAL

- 1.0 The Memphis Area Transit Authority (herein-after referred to as MATA) seeks proposals from qualified firms for On-call Services for Rail System Track and Facility Maintenance as described in Section B of the Request for Proposal. These instructions provide detailed legal and technical requirements for the acquisition of these services. This Request for Proposal will become part of the contract.

MATA will enter into a contract with one or more proposers for services related to the Project. This Project is more particularly described in Section B- Scope of Services. General Provisions for Construction are included in Section 00700. Where there are conflicts between the General Provisions and Section A, the provisions of Section A shall apply.

MATA is a public agency responsible for providing public transportation services within the City of Memphis and surrounding communities.

- 1.2 "Purchaser" or "Grantee" or "Authority" or "Owner" means MATA. The words "proposal" and "offer" are synonymous and it is understood that once MATA accepts the same, the document will constitute the contract contemplated by these instructions. The words "Proposer", "Contractor" and "Vendor" are synonymous.
- 1.3 This Request for Proposal (RFP) does not commit MATA to award a contract, pay any costs incurred in preparation of proposals in response to the RFP or to procure or contract for services. Proposers shall be responsible for all costs incurred as part of their participation in the pre-award process.
- 1.4 Proposals will be received by MATA at its Purchasing offices located at 1330 Levee Road, Memphis, TN 38108-1089 until 10:00 A.M. LOCAL TIME ON DECEMBER 1, 2022 **PROPOSALS RECEIVED AFTER THIS DATE AND TIME WILL BE RETURNED TO THE PROPOSER UNOPENED.**

All Proposals shall be deemed received at the above address. Proposers are solely responsible for ensuring that his/her Proposal is timely delivered. Proposers who rely on overnight delivery services, the United States mail, private mail services, local couriers or delivery services remain solely responsible for timely delivery of the Proposal and assume all risk of late delivery, mis-delivery and non-delivery.

All Proposals will be date/time stamped, logged and deposited by MATA Staff.

Proposers are reminded that all Proposals must be securely sealed, have the enclosed label attached and be clearly marked "Proposal".

Please note that the Purchasing Department's hours are 8:00 a.m. to 4:30 p.m. Acceptance of sealed bids and proposals will only be made during these hours. If you choose to use a delivery service, please note the deliveries must be made within these hours. Proposers are reminded to examine each page carefully and execute/sign all sections that apply to this solicitation and their sole responsibility for ensuring that it is deposited in the Purchasing Department.

Proposers may verify receipt of Proposals by contacting MATA at (901) 722-7102.

- 1.5 Any Proposer desiring a change in, deletion of, exception to, or clarification of any provision in this RFP must submit a written request to Shelia Maclin, at MATA, on or before 4:00 p.m. local

time on November 15, 2022. VERBAL QUESTIONS WILL NOT BE ANSWERED, THUS PREVENTING AN UNFAIR ADVANTAGE TO ANY PROPOSER.

- 1.6 All proposals and related documents shall be based on the conditions of a financial assistance contract between MATA, the State of Tennessee, and the United States Department of Transportation, under the Federal Transit Act, as amended. Terms and conditions established under the Act and the regulations implementing the Act will apply.

2.0 PROPOSAL REQUIREMENTS

- 2.1 Proposals must concisely set forth full, accurate, and complete information required by this RFP, including any attachments.
- 2.2 The Proposer shall provide all the work described in Section B - Scope of Work.
- 2.3 The price to be quoted in any proposal shall include all labor, materials, tools, equipment, transportation, and other costs necessary to fully complete the work as set forth in the Scope of Work. Anything omitted from the Scope of Work that is clearly necessary for the completion of the work should be considered a portion of such proposal.
- 2.4 An original and five (5) copies of the proposal and all related documents shall be submitted on forms furnished, or copies thereof, and shall be manually signed. If erasures or other changes appear on the forms, the person signing the proposal shall initial such erasures and changes. Telegraphic or facsimile proposals shall not be considered.
- 2.5 Modifications of proposals already submitted will be considered if received at the office designated in the proposal by the time set for receipt of proposal.
- 2.6 Proposals shall be valid for a minimum period of ninety (90) days subsequent to the closing date. Proposals offering less than ninety (90) days for acceptance by MATA from the closing date will be considered non-responsive.

3.0 FORMAT

- 3.1 All Proposers must provide the following information:
1. Personnel Qualifications and Related Experience
Resumes must be provided for personnel who are expected to be utilized, based on the technical requirements described in Section B. A brief summary of the relevant experience and proposed role should be provided for key personnel
 2. Firm Qualifications and Experience
Specialized and technical experience and competence of the firm/team must be presented. Provide a list of recent projects completed by the firm. For at least four projects, include a description of the services provided, client contact name, telephone number, fax number and email address.
 3. Required Forms and Certifications

The following signed forms and certifications shall be provided:

- * Addenda Acknowledgment
- * Affidavit of Non-Collusion
- * Buy America Certificate
- * Certificate of Primary Participant Regarding Debarment, Suspension, and other Responsibility Matters
- * Certificate of Lower Tier Participants Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- * Certification of Restrictions on Lobbying
- * Letter of Intent to Perform as a DBE Contractor
- * Cost Proposal Form

4.0 CHANGES TO THE SPECIFICATIONS

- 4.1 Changes to the specifications will be made by written addendum by MATA and will be forwarded to all persons and firms to whom documents have been transmitted.
- 4.2 Requests for clarification must be submitted in writing to Shelia Maclin, MATA, 1330 Levee Road, Memphis, TN 38108 and must be received no later than 4:00 p.m. local time on November 15, 2022, in accordance with the Approved Equal procedures described in the General Provisions for Construction. Any unapproved deviations, exceptions, substitutes, alternates or conditional qualifications contained in a proposal may be cause for its rejection. **VERBAL QUESTIONS WILL NOT BE ANSWERED, THUS PREVENTING AN UNFAIR ADVANTAGE TO ANY PROPOSER.** Questions may be faxed to (901) 272-2912 OR 274-5866 or email smaclin@matatransit.com

5.0 PROPOSAL EVALUATION

- 5.1 MATA will appoint an evaluation committee that will evaluate proposals and recommend award of the contract to a particular proposer. The committee will apply those evaluation criteria set forth in the RFP or in addenda that may be issued. An evaluation criterion is deemed to include any unstated "subcriterion" that logically might be included within the scope of the stated criterion.
- 5.2 The evaluation committee may request interviews with the short listed firms.
- 5.3 MATA reserves the right to enter into negotiations with the top ranked proposer without requesting interviews.
- 5.4 RFPs will be evaluated on the basis of the following factors in the following order of priority:
1. Specialized experience and technical competence of the personnel proposed for this project.
 2. Qualifications and experience of the firms/teams.
 3. Cost
 4. Past record of performance on contracts including such factors as cost control, quality of work, ability to meet schedules, and responsiveness to the client.
- 5.5 Negotiations will be in conformance with applicable federal, state, and local laws, Regulations, and procedures. The objective of the negotiations will be to reach agreement on all provisions of the proposed contract, including contract price. MATA reserves the right to request documentation supporting the proposed contract price including overhead rates for the firm and subcontractors. Such information can include but limited to:
- a. An overview of the accounting system and its capability to tract project costs.
 - b. Chart of accounts including a definition of what is included in each account.

- c. A statement indicating the basis of the overhead rate and whether it is historical information or projections. (The proposer will certify that the overhead burden rate separates direct and indirect charges and that indirect charges do not include any unauthorized charges for Federal Acquisition Regulations, Part 31.)

5.6 Davis-Bacon Wages Rates apply to this project.

5.7 Bonding, Insurance, including Railroad Protective Insurance (for work on the Riverfront Line only), and licensing requirements apply to this procurement. See General Contract Provisions for more information.

6.0 AWARD OF CONTRACT

6.1 The contract will be awarded to the responsible proposer whose proposal is most advantageous to MATA as determined by ranking on the evaluations criteria and results of negotiations.

6.2 MATA reserves the right to reject any and all proposals or waive informalities and irregularities in offers received. MATA reserves the right to award multiple contracts as results of negotiation.

6.3 A written notice of award or Acceptance of Offer, mailed or otherwise furnished the successful Proposer within the time specified in the RFP, shall be deemed to result in a binding contract.

7.0 PROTESTS

7.1 MATA will consider all protests filed in a timely manner regarding the award of a contract, whether submitted before or after award. All protests are to be submitted in writing, in accordance with the protest procedures described in Attachment 1, General Provisions for Construction.

8.0 DISADVANTAGED BUSINESS ENTERPRISE

MATA has established a 0% goal for Disadvantaged Business Enterprise participation. Please refer to Section D: Utilization of Disadvantaged Business Enterprise for a comprehensive discussion about MATA's DBE Program and its requirements.

The following rules apply to Disadvantaged Business Enterprise participation by firms/teams:

- Only certified Disadvantaged Business Enterprises can be counted toward the goal. Participation by certified "Minority Business Enterprises" (MBE) or certified "Woman Owned Business Enterprises" (WBE) cannot be counted toward the goal. While participation by MBEs and WBEs is encouraged, MATA is governed by the U.S. Department of Transportation program which only recognizes the designation of DBE.
- DBEs must be certified in Tennessee.
- MATA is a member of the Tennessee Unified Certification Program (TN UCP) and accepts Tennessee DBE certifications from the following entities:
 - Memphis Area Transit Authority
 - Tennessee Department of Transportation Unified Certification Program
 - Uniform Certification Agency (managed by the Mid South Minority Business Council)

A list of firms currently certified in Tennessee can be found at:
www.tdot.state.tn.us/dbedirectinternet/

- Certification in the State of Tennessee must be achieved by the time the proposals are due otherwise the participation of a proposed DBE firm cannot be counted toward the goal. If a proposed DBE firm is not

certified at the time the proposals are due and, as a result, the goal is not met, then the proposal will be considered "non-responsive" and rejected unless the good faith efforts have been accepted as satisfactory.

It is highly recommended that a copy of a current certification of Disadvantaged Business Enterprise issued by the Tennessee Department of Transportation or the Uniform Certification Agency be included with the offer for each DBE firm being proposed.

IF A PROPOSER IS UNABLE TO MEET OR EXCEED THE GOAL ESTABLISHED FOR THIS PROCUREMENT, THE GOOD FAITH EFFORT EXPLAINED IN THIS SECTION MUST BE MET. THIS MUST BE DONE IN WRITING AND SUBMITTED WITH THE RFP.

SECTION B
SCOPE OF WORK

SECTION B

SCOPE OF SERVICES

ON-CALL SERVICES FOR RAIL SYSTEM TRACK AND FACILITY MAINTENANCE

1.0 GENERAL

The Memphis Area Transit Authority (MATA) is seeking the services of one or more qualified companies to perform certain maintenance and repair activities for rail track and associated facilities as needed on the downtown light rail/trolley system.

The MATA downtown rail system consists of approximately ten miles of track on three lines – Main Street, Riverfront, and Madison Avenue. In addition to the three lines, there is also a small amount of track in and around the Trolley Maintenance and Storage Facility ("Trolley Barn") at 547 N. Main Street, between Mill Avenue and Greenlaw Avenue. The three lines are generally described as follows:

Main Street Line:

Length: approximately 2.3 miles

Alignment: North Main Street between Greenlaw Avenue (at Trolley Barn) and A.W. Willis (single track; embedded, encased in elastomeric grout; reserved lane; 0.3 miles);
North Main Street between A.W. Willis Avenue and Exchange Avenue (double track; embedded; encased in elastomeric grout; mixed traffic right-of-way; 0.5 miles);
Main Street Mall between Exchange Avenue and Peabody Place (double track; embedded; encased in elastomeric grout; reserved right-of-way in pedestrian mall; 0.8 miles);
South Main Street between Peabody Place and Central Station south of G.E. Patterson Avenue (double track; embedded; encased in elastomeric grout; mixed traffic right-of-way; 0.7 miles)
Opening Date: May 1993

Riverfront Line:

Length: approximately 2.4 miles

Alignment: Alley north of A. W. Willis Avenue between Main Street and Canadian National (CN) Railroad (single track; ballasted; exclusive right of way; 0.1 Miles); former (CN) Railroad western track between alley north of A. W. Willis Avenue and Huling Street (single track; ballasted; exclusive right-of-way; 1.8 miles, includes track on bridge over Beale Street); Tennessee Street between Huling Street and G.E. Patterson Avenue (single track; embedded; encased on elastomeric grout; mixed traffic right-of-way; 0.3 miles); G.E. Patterson Avenue between Tennessee Street and South Main Street (single track; embedded; encased in elastomeric grout; mixed traffic right-of-way; 0.2 miles) Opening Date: October 1997

Madison Avenue Line:

Length: approximately 2.5 miles

Alignment: Madison Avenue between Main Street and Second Street (single track; embedded; encased in rubber boot; reserved lane; 0.2 miles);
Madison Avenue between Second Street and west side of Danny Thomas Blvd. (double track; embedded; encased in rubber boot; mixed traffic right-of-way; 0.5 miles);

Madison Avenue between west side of Danny Thomas Blvd and east side of Danny Thomas Blvd.(single track on two parallel outrigger bridges; ballasted and direct fixation track; dedicated right-of-way; 0.03 miles);
Madison Avenue between east side of Danny Thomas Blvd. and Watkins Street (double track; embedded; encased in rubber boot; mixed traffic right-of-way; 1.8 miles)
Opening Date: March 2004

The system also includes a variety of special track work, and switches that are covered by this procurement.

2.0 SCOPE OF SERVICES

On-going track and facility maintenance will be accomplished as a joint effort between the contractor and MATA's maintenance staff. In general, MATA staff will be responsible for routine daily maintenance activities and light repairs, and the contractor will be responsible for specialized activities such as:

- Conducting annual detailed inspections using FRA and or APTA standards.
- Conducting biannual switch inspections, including performing switch alignments for the Main Street and Madison lines. The Madison line contains fifteen switches and Main Street also contains fifteen switches.
- Carrying out non-emergency repairs, when repair work is extensive or requires specialized skills and/or equipment
- Carrying out emergency repairs
- Advising and troubleshooting
- Documenting inspections and repairs with written reports using FRA and/or APTA standards including photographs, and/or sketches, as appropriate
- Assisting with other related issues
- If necessary, changing cross-ties including associated ballast and tampering work
- Inspection, maintenance and repair on bridge structures, crossings, and fences
- Inspection, maintenance, and repair of special trackwork
- Rail grinding

The successful contractor will be required to provide qualified and certified laborers for all repairs.

The successful contractor will be required to provide their company's program Safety Program plan to MATA's project manager before commencing any repairs or inspections.

The successful contractor will be required to attend MATA required safety training (may also include training from other railroads).

The successful contractor will be required to provide their company's program standards/reference materials used when inspecting and/or repairing MATA's track.

The successful contractor will be required to comply with Federal, State, and City regulations before and after completing repairs. This will include complying with the Underground Utility Damage Prevention Act Tenn. Code Ann. § 65-31-101 (2014).

Notice of Intent to excavate or demolish;

- Except as provided in § 65-31-109, before beginning any excavation or demolition operation described in § 65-31-104, other than an impending emergency as defined in § 65-31-102, each person responsible for such excavation or demolition shall serve written, telephonic or e-mail notice of intent to excavate or demolish at least three (3) working days prior to the actual date of excavation or demolition, but not more than 10 full working days prior to such time, unless a different period has been agreed to in writing by the person responsible for the excavation or

demolition and the operator or designated representative. Should a period of time of 15 calendar days from the actual date specified to start excavation or demolition expire without the excavation or demolition being completed, then the person responsible for such excavation or demolition shall serve an additional written, telephonic or email notice of intent to excavate or demolish at least three (3) working days prior to the expiration of time on the fifteenth calendar day.

- The ticket number shall be provided to MATA's Project Manager before commencing any repairs.

The successful contractor will be required to respond to emergencies within two hours of the initial contact by MATA and have personnel on site within four hours.

The successful contractor will be required to contact MATA's personnel 48 hours before entering onto MATA's property to provide any routine inspections or repairs.

The successful contractor will be required to notify MATA's Project Manager immediately when the projected project timeline changes or during the repair stage if unforeseen repairs surface.

The successful contractor will be responsible for all necessary traffic protection and safety equipment required for work on the roadways and adjacent railroads.

The successful contractor must have "in house" all normally used hand tools and equipment to perform routine maintenance covered by this contract. Prior to purchase or rental of any specialized equipment, the contractor shall advise MATA of any and all costs associated with acquisition or rental of such equipment prior to the purchase or rental of such equipment and receive MATA's approval. Any specialized equipment purchased in the performance of this work shall become the property of MATA at the end of the contract period.

Certain activities must be performed during times when trolley service is not in operation. In general, trolley service operates Monday through Thursday from 6:00 a.m. to 11:30 p.m., Friday from 6:00 a.m. to 1:00 a.m., Saturday from 7:30 a.m. to 1:00 a.m., and Sunday from 10:00 a.m. to 6:00 p.m.

MATA anticipates that the annual value of the work covered by this procurement will be \$50,000 - \$100,000, but makes no commitments as to the actual amount of work to be authorized.

3.0 CONTRACTUAL ARRANGEMENTS

MATA will enter into an agreement with one or more contractors for services to be provided over a period of five years. Assignments will be budgeted based on unit costs specified in the contractor's Cost Proposal after negotiation and acceptance by MATA. In general unit costs will cover items such as:

- Labor (straight time, overtime)
- Equipment
- Materials
- Supplies
- Mark-up percentage

Task orders will be issued to the Contractor for work needed during the term of the contract. The task order amount will be based upon the Contractor's estimated hours for performing the work multiplied by the hourly rates in the Contract plus any additional costs for insurance, performance bond, etc.

There is no guaranteed level of work or fee associated with this contract.

SECTION C
REQUIRED FORMS AND CERTIFICATIONS

MEMPHIS AREA TRANSIT AUTHORITY
ADDENDA ACKNOWLEDGEMENT FORM

Addenda received (if none received, write "none received")

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Name of individual, partner or corporation:

Street Address: _____

City, State and Zip Code: _____

Telephone Number: _____ Fax Number: _____

Printed Name: _____

Authorized Signature: _____

Title: _____

EXHIBIT I
MEMPHIS AREA TRANSIT AUTHORITY
AFFIDAVIT OF NON-COLLUSION

Affidavit of Non-Collusion:

I hereby swear (or affirm) under the penalty of perjury:

- (1) That I am the proposer (if the proposer is an individual), a partner of the proposer (if the proposer is a partnership), or an officer or employee of the proposaling corporation with authority to sign on its behalf (if the proposer is a corporation);
- (2) That the attached proposal or proposals have been arrived at by the proposer independently, and have been submitted without collusion with, and without any agreement, understanding, or planned common course of action with any other vendor of materials, supplies, equipment, or services described in the invitation to proposal, designed to limit independent proposaling or competition.
- (3) That the contents of the proposal or proposals have not been communicated by the proposer or its employees or agents to any person not an employee or agent of the proposer 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.

Signed: _____

Firm Name: _____

Subscribed and sworn to before me this ____ day of _____

Notary Public

My Commission expires _____

Proposer's
E.I. Number: _____

(Number used on Employer's Quarterly Federal tax return)

EXHIBIT II

MEMPHIS AREA TRANSIT AUTHORITY

BUY AMERICA CERTIFICATE
(For Contracts of \$100,000 or greater)

The proposer hereby certifies that it will comply with the requirements of Section 165a of the Surface Transportation Assistance Act of 1982 and the regulations in 49 CFR 661.

Date _____

Signature _____

Title _____

or

The proposer hereby certifies that it cannot comply with the requirements of Section 165a of Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165b of the Surface Transportation Assistance Act and regulations in 49 CFR 661.7.

Date _____

Signature _____

Title _____

EXHIBIT III

MEMPHIS AREA TRANSIT AUTHORITY

**CERTIFICATION OF PRIMARY PARTICIPANT (prime contractor)
REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The Primary Participant (potential contractor for a major third-party contract),
_____ certifies to the best of its knowledge and
belief that it and its principals:

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

(If the primary participant (potential third-party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT (POTENTIAL CONTRACTOR FOR A MAJOR THIRD-PARTY CONTRACT), _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTION 3801 ET. SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

EXHIBIT III

MEMPHIS AREA TRANSIT AUTHORITY

**CERTIFICATION OF LOWER-TIER PARTICIPANTS (subcontractors)
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

The Lower Tier Participant (potential third-party contractor, or potential subcontractor under a major third-party contract), _____, certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the Lower Tier Participant, (potential third-party contractor or potential subcontractor under a major third-party contract) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal).

The LOWER-TIER PARTICIPANT, POTENTIAL THIRD-PARTY CONTRACTOR, OR POTENTIAL SUBCONTRACTOR UNDER A MAJOR THIRD PARTY CONTRACT, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

EXHIBIT IV

MEMPHIS AREA TRANSIT AUTHORITY

CERTIFICATION OF RESTRICTIONS ON LOBBYING
(For Contracts of \$100,000 or greater)

I, _____, hereby certify on behalf of _____
Name of Official Name of Contractor

that:

- (1) No Federal appropriated funds have been paid or will be paid on behalf of the undersigned 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 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 appropriate 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 Federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Office of Management and Budget Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who falls 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.

Executed this _____ day of _____, _____.

By: _____
Signature of Authorized Official

Title of Authorized Official

**Certification of Utilization of
Disadvantaged Business Enterprises**

The undersigned, as authorized representative of the Proposer, agrees to accept the terms and conditions of Section D and commits to carrying out the DBE contracting arrangements specified in the Schedule of DBE Participation.

Signature _____

Title _____

Date _____

Letter of Intent to Perform as a DBE Subcontractor

To: _____
Name of Prime/General Proposer

Address of Prime/General Proposer

City/State/Zip

23-07
MATA RFP Number

The undersigned DBE intends to perform work in connection with the above project as (check one):

An Individual; A Corporation; Partnership; A Joint Venture

The undersigned DBE is prepared to perform the following described work in connection with the above project (specify in detail the particular work, items or parts thereof to be performed):

at the following price \$ _____ This price equals _____ % of the total proposal price or contract to be awarded to the prime proposer.

Work or Items by Subcontractor	Projected Commencement Date	Projected Completion Date
_____	_____	_____
_____	_____	_____
_____	_____	_____

DBE Business Name

Certification # / State of Certification

Address

City/State/Zip

Signature of Authorized DBE Representative

Expiration Date of Certification

Date

Phone Number Fax Number

No agreement has been entered into between the above-named Prime Proposer and the DBE subcontractor wherein the above-named DBE subcontractor has promised not to provide subcontracting quotations to other proposers.

Date

Name of Prime or General Proposer

Signature of Authorized Representative

SCHEDULE OF DBE PARTICIPATION

NAME OF DBE FIRM	ROLE IN PROJECT (P, JV, S)	SERVICES TO BE PERFORMED	% OF TOTAL PROJECT COST
TOTAL			

P = Prime Contractor
JV = Joint Venture
S = Subcontractor

NO RESPONSE

*** PLEASE EITHER PRINT OR TYPE INFORMATION ON THIS FORM ***

TO: Memphis Area Transit Authority (MATA)

Our company is submitting a "NO RESPONSE" on RFP# 23-07 On-Call Services for Rail System Track and Facility Maintenance for the reason indicated below.

- Product or service is not available.
 - Cannot provide required bonds.
 - Other obligations - cannot make deadline.
 - Other (please explain below)
-
-

FROM:

Name of Company: _____

Representative: _____

Address: _____

Phone Number: _____

Signature: _____

- Please keep our name on the proposer's list for this item.
- Please remove our name from the proposer's list for this item.

FAILURE TO RETURN EITHER A PROPOSAL OR THIS FORM MAY RESULT IN REMOVAL FROM THE PROPOSER'S LIST.

COST PROPOSAL FORM

RFP 23-07

**On-Call Services for Rail System Track and Facility Maintenance
YEAR-1 January 1, 2023– December 31, 2023**

LABOR	UNIT	REGULAR	PREMIUM	SUNDAY/HOLIDAY
<u>Employee Classification</u>				
Principal	Hour	\$	\$	\$
Project Manager	Hour	\$	\$	\$
Foreman	Hour	\$	\$	\$
Electrician	Hour	\$	\$	\$
Laborer – Skilled	Hour	\$	\$	\$
Laborer – Unskilled	Hour	\$	\$	\$
Equipment Operator	Hour	\$	\$	\$
Purchasing Agent	Hour	\$	\$	\$
Material Handler/Deliverer	Hour	\$	\$	\$

EQUIPMENT	UNIT	REGULAR	PREMIUM	SUNDAY/HOLIDAY
<u>Equipment Classification</u>				
Backhoe	Hour	\$	\$	\$
Bucket Truck	Hour	\$	\$	\$
Dump Truck	Hour	\$	\$	\$
Jack Hammer	Hour	\$	\$	\$
Concrete Saw	Hour	\$	\$	\$
Pick-Up Service Truck	Hour	\$	\$	\$

NAME OF INDIVIDUAL/
PARTNER/CORPORATION: _____

ADDRESS: _____

PHONE: _____ FAX: _____ EMAIL: _____

BY: _____ TITLE: _____

SIGNATURE: _____

IMPORTANT – PROPOSAL MUST BE SIGNED

COST PROPOSAL FORM

RFP 23-07

**On-Call Services for Rail System Track and Facility Maintenance
YEAR-2 January 1, 2024– December 31, 2024**

LABOR	UNIT	REGULAR	PREMIUM	SUNDAY/HOLIDAY
<u>Employee Classification</u>				
Principal	Hour	\$	\$	\$
Project Manager	Hour	\$	\$	\$
Foreman	Hour	\$	\$	\$
Electrician	Hour	\$	\$	\$
Laborer – Skilled	Hour	\$	\$	\$
Laborer – Unskilled	Hour	\$	\$	\$
Equipment Operator	Hour	\$	\$	\$
Purchasing Agent	Hour	\$	\$	\$
Material Handler/Deliverer	Hour	\$	\$	\$

EQUIPMENT	UNIT	REGULAR	PREMIUM	SUNDAY/HOLIDAY
<u>Equipment Classification</u>				
Backhoe	Hour	\$	\$	\$
Bucket Truck	Hour	\$	\$	\$
Dump Truck	Hour	\$	\$	\$
Jack Hammer	Hour	\$	\$	\$
Concrete Saw	Hour	\$	\$	\$
Pick-Up Service Truck	Hour	\$	\$	\$

NAME OF INDIVIDUAL/
PARTNER/CORPORATION: _____

ADDRESS: _____

PHONE: _____ FAX: _____ EMAIL: _____

BY: _____ TITLE: _____

SIGNATURE: _____

IMPORTANT – PROPOSAL MUST BE SIGNED

COST PROPOSAL FORM

RFP 23-07

**On-Call Services for Rail System Track and Facility Maintenance
YEAR-3 January 1, 2025 – December 31, 2025**

LABOR	UNIT	REGULAR	PREMIUM	SUNDAY/HOLIDAY
<u>Employee Classification</u>				
Principal	Hour	\$	\$	\$
Project Manager	Hour	\$	\$	\$
Foreman	Hour	\$	\$	\$
Electrician	Hour	\$	\$	\$
Laborer – Skilled	Hour	\$	\$	\$
Laborer – Unskilled	Hour	\$	\$	\$
Equipment Operator	Hour	\$	\$	\$
Purchasing Agent	Hour	\$	\$	\$
Material Handler/Deliverer	Hour	\$	\$	\$

EQUIPMENT	UNIT	REGULAR	PREMIUM	SUNDAY/HOLIDAY
<u>Equipment Classification</u>				
Backhoe	Hour	\$	\$	\$
Bucket Truck	Hour	\$	\$	\$
Dump Truck	Hour	\$	\$	\$
Jack Hammer	Hour	\$	\$	\$
Concrete Saw	Hour	\$	\$	\$
Pick-Up Service Truck	Hour	\$	\$	\$

NAME OF INDIVIDUAL/
PARTNER/CORPORATION: _____

ADDRESS: _____

PHONE: _____ FAX: _____ EMAIL: _____

BY: _____ TITLE: _____

SIGNATURE: _____ (Print Name)

IMPORTANT – PROPOSAL MUST BE SIGNED

COST PROPOSAL FORM

RFP 23-07

**On-Call Services for Rail System Track and Facility Maintenance
YEAR-4 January 1, 2026- December 31, 2026**

LABOR	UNIT	REGULAR	PREMIUM	SUNDAY/HOLIDAY
<u>Employee Classification</u>				
Principal	Hour	\$	\$	\$
Project Manager	Hour	\$	\$	\$
Foreman	Hour	\$	\$	\$
Electrician	Hour	\$	\$	\$
Laborer – Skilled	Hour	\$	\$	\$
Laborer – Unskilled	Hour	\$	\$	\$
Equipment Operator	Hour	\$	\$	\$
Purchasing Agent	Hour	\$	\$	\$
Material Handler/Deliverer	Hour	\$	\$	\$

EQUIPMENT	UNIT	REGULAR	PREMIUM	SUNDAY/HOLIDAY
<u>Equipment Classification</u>				
Backhoe	Hour	\$	\$	\$
Bucket Truck	Hour	\$	\$	\$
Dump Truck	Hour	\$	\$	\$
Jack Hammer	Hour	\$	\$	\$
Concrete Saw	Hour	\$	\$	\$
Pick-Up Service Truck	Hour	\$	\$	\$

NAME OF INDIVIDUAL/PARTNER/CORPORATION: _____

ADDRESS: _____

PHONE: _____ FAX: _____ EMAIL: _____

BY: _____ TITLE: _____

SIGNATURE: _____

IMPORTANT – PROPOSAL MUST BE SIGNED

COST PROPOSAL FORM

RFP 23-07

**On-Call Services for Rail System Track and Facility Maintenance
YEAR-5 January 1, 2027– December 31, 2027**

LABOR	UNIT	REGULAR	PREMIUM	SUNDAY/HOLIDAY
<u>Employee Classification</u>				
Principal	Hour	\$	\$	\$
Project Manager	Hour	\$	\$	\$
Foreman	Hour	\$	\$	\$
Electrician	Hour	\$	\$	\$
Laborer – Skilled	Hour	\$	\$	\$
Laborer – Unskilled	Hour	\$	\$	\$
Equipment Operator	Hour	\$	\$	\$
Purchasing Agent	Hour	\$	\$	\$
Material Handler/Deliverer	Hour	\$	\$	\$

EQUIPMENT	UNIT	REGULAR	PREMIUM	SUNDAY/HOLIDAY
<u>Equipment Classification</u>				
Backhoe	Hour	\$	\$	\$
Bucket Truck	Hour	\$	\$	\$
Dump Truck	Hour	\$	\$	\$
Jack Hammer	Hour	\$	\$	\$
Concrete Saw	Hour	\$	\$	\$
Pick-Up Service Truck	Hour	\$	\$	\$

NAME OF INDIVIDUAL/
PARTNER/CORPORATION: _____

ADDRESS: _____

PHONE: _____ FAX: _____ EMAIL: _____

BY: _____ TITLE: _____

SIGNATURE: _____ (Print Name)

IMPORTANT – PROPOSAL MUST BE SIGNED

COST PROPOSAL FORM

MARK-UP (*)

Overhead on Labor	Percent	_____ %
Overhead on Material	Percent	_____ %
Overhead on Equipment	Percent	_____ %
Overhead on Subcontractors	Percent	_____ %
Profit	Percent	_____ %
_____	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %

ESCALATION RATE

Year 1 to Year 2	Percent	_____ %
Year 2 to Year 3	Percent	_____ %
Year 3 to Year 4	Percent	_____ %
Year 4 to Year 5	Percent	_____ %

(*) Add classifications, units, and unit costs, as appropriate. Include additional pages if necessary.

NAME OF INDIVIDUAL/
PARTNER/CORPORATION: _____

ADDRESS: _____

PHONE: _____ FAX: _____ EMAIL: _____

BY: _____ TITLE: _____
(Print Name)

SIGNATURE: _____

IMPORTANT – PROPOSAL MUST BE SIGNED

SECTION D

UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES

Utilization of Disadvantaged Business Enterprises

1. Policy and Terms

a. It is the policy of the Memphis Area Transit Authority (MATA) that Disadvantaged Business Enterprises (DBE) as defined in the United States Department of Transportation (USDOT) Regulation 49 C.F.R. Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds.

b. MATA has established The DBE participation goal for this project, if any, is stated in Section A.

c. The DBE participation goal shall be expressed as a percentage of the total Contract price. The Proposer may also meet the goal by showing good faith efforts to meet the goal as described in 49 C.F.R. Part 26 and as set forth in Section D. Any evidence of good faith efforts must be submitted with the sealed Proposal or the Proposal will be rejected in its entirety.

d. The DBE participation goal shall apply to the total dollar value of this contract, inclusive of all amendments, modifications, and change orders. The Proposer agrees to make its best efforts to include DBE participation in any contract modification work.

e. The goal may be met, as further explained in Section D hereof, by the Proposer's status as a DBE, by a joint venture with one or more DBEs, by subcontracting a portion of the work to one or more DBEs, by the purchase of materials used in the performance of the contract from one or more DBEs or by any combination of the above or through a showing of good faith efforts as defined in Section D hereof.

f. A Proposer who fails to meet the DBE goal and fails to demonstrate sufficient good faith efforts shall not be eligible to be awarded the contract. All documentation of good faith efforts by a Proposer must be included in the envelope or package containing the Proposal.

g. MATA prohibits agreements between a Proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other Proposers.

2. Definitions

a. Disadvantaged Business Enterprise (DBE) means a small business concern (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

b. "Good Faith Efforts" means efforts to achieve a DBE contract goal as specified in 49 C.F.R., Part 26 and Section D hereof.

c. "Joint Venture" means an association of two or more businesses to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skill and knowledge. Proposers may develop joint venture agreements as an instrument to provide participation by DBEs in contract work. A joint venture seeking to be credit for DBE participation may be formed among DBE firms or between a DBE firm and non-DBE firm.

d. **"Small Business Concern"** means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated thereto, including Title 13 C.F.R., Part 121, except that a small business concern shall not include any concern or group of concerns controlled by the small socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$16.6 million over the previous three (3) fiscal years, as such figure may thereafter be adjusted by the Secretary of the DOT.

e. **"Socially and Economically Disadvantaged Individuals"** means any individual who is a citizen of the United States (or lawfully admitted permanent residents) and who is in the following groups, the members of which are rebuttably presumed to be socially and economically disadvantaged:

1. "Black Americans" (which includes persons having origins in any of the black racial groups of Africa);
2. "Hispanic Americans" (which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race);
3. "Native Americans" (which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians);
4. "Asian-Pacific Americans" (which includes persons whose origins are from Japan, China, Taiwan, Korea, Laos, Cambodia (Kampuchea), the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific (Republic of Palau), and the Commonwealth or the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong; and
5. "Subcontinent Asian-Indian Americans" which includes persons whose origins are from India, Pakistan, and Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
6. Women.
7. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA) at such time as the SBE designation becomes effective.

f. **"USDOT" or "DOT"** refers to the U.S. Department of Transportation.

3. Counting DBE Participation Toward the Contract Goal

The inclusion of any DBE by the Proposer in its Proposal documents shall not conclusively establish the Proposer's eligibility for full DBE credit for the firms' participation in the contract. The Compliance Officer, DBE Program, will determine the amount of DBE participation credit based upon an analysis of the specific duties, which will be performed by the DBE.

The Proposer may count toward its DBE goal only expenditures to firms which are currently certified by the Uniform Certification Agency or the Tennessee Department of Transportation and which perform a commercially useful function. A firm is considered to perform a commercially useful function when it is responsible for the performance of a distinct element of the work and carries out its responsibilities by actually performing, managing, and supervising the work involved.

To evaluate whether the firm is performing a commercially useful function, the Compliance Officer, DBE Program will evaluate the amount of work subcontracted, industry practices, and other relevant factors. The Compliance Officer, DBE Program reserves the right to deny or limit DBE credit to the Proposer where any DBE is found to be engaged in substantial pass-through activities with others.

DBE participation shall be counted toward the DBE goal in the contract as follows:

- a. Once a DBE is determined to be eligible in accordance with these rules, the total dollar value of the contract awarded to the DBE may be counted toward the DBE goal except as follows:
- b. A Proposer may count toward its DBE goal that portion of the total dollar value of a contract with an eligible joint venture equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces.
- c. Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE prime contractor subcontracts more than thirty percent (30%) or a significantly greater portion of the work of the contract that would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. Evidence may be presented by the Proposer involved to rebut this presumption.
- d. When a DBE subcontracts a part of the work under the contract to another firm, the value of the subcontracted work may only be counted towards the DBE goal if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goal.
- e. The Proposer may count one hundred percent (100%) of its expenditures for materials and supplies required under the contract and which are obtained from a DBE manufacturer toward the DBE goal. The Proposer may count sixty percent (60%) of its expenditures for materials and supplies under the contract obtained from a DBE regular dealer towards its DBE goal. The terms "manufacturer" and "regular dealer" are defined in 49 C.F.R. Part 26.55(e)(1)(ii) and (2)(iii).
- f. The Proposer may count towards its DBE goal expenditures to DBEs which are not manufacturers or regular dealers, such as fees or commissions charged for services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies and transportation charges as set forth in 49 C.F.R. Part 26. However, the Compliance Officer, DBE Program must determine the fee or charge to be reasonable and not excessive as compared with fees or charges customarily allowed for similar services.
- g. Proposer must use good business judgment when negotiating with subcontractors and take a DBE's price and capabilities into consideration. The fact that there may be some additional costs involved in finding and using DBE firms is not sufficient reason to fail to meet the DBE goal set forth in the contract, as long as such costs are reasonable.

4. DBE Substitutions

a. Arbitrary changes by the Contractor of the commitments previously indicated in the Schedule of DBE participation are prohibited. No changes may be made to the DBE firms listed on this schedule after the opening of Proposals but prior to contract award. Further, after entering into each approved DBE subcontract, the Contractor shall neither terminate the subcontract, nor reduce the scope of the work to be performed by the DBE, nor decrease the price to the DBE, without receiving prior written approval of the Compliance Officer, DBE Program. Such approval is required even if the DBE agrees with the change to the DBE's contract desired by the Contractor.

b. It may become necessary, at times, to substitute a new subcontractor in order to complete the contract work. The substitution procedure to be followed is:

1. The Contractor must immediately notify the Compliance Officer, DBE Program, in writing, of the proposed substitution of subcontractor. The Contractor's notification must include the specific reasons it intends to reduce the scope of or terminate a DBE subcontract; adequate documentation to support the Contractor's proposed action; and a proposed substitute firm to complete the DBE's portion of work.

2. The following is a non-exclusive list of the types of reasons, which justify substitution: the DBE was found not to be able to perform, or not to be able to perform on time; the DBE's work product was not acceptable; the DBE demands an unreasonable escalation of its price.

3. The following is a non-exclusive list of the types of reason which do not justify substitution: a replacement firm has been recruited by the Contractor to perform the same work under more advantageous terms; performance issues by the DBE were disputed and every reasonable effort to have the dispute resolved or mediated has not been taken; the DBE has requested a reasonable price escalation which may be justified due to unforeseen circumstances (e.g. a change in scope of DBE's work).

4. If the subcontractor to be substituted for the DBE is not a DBE, the Contractor must show adequate good faith efforts as set forth in Section D hereof.

5. The Contractor's request for approval of a substitution must include the name, address, and principal official of the proposed substitute subcontractor and the dollar value and scope of work of the proposed subcontract. If the new subcontractor is a DBE, all DBE affidavits and documents required by the contract shall be attached.

6. MATA will evaluate the submitted documentation and respond within ten (10) business days to the request for approval of a substitution. MATA's response may approve the request, seek more information, request an interview to clarify the problem or reject the proposed DBE substitution, with the reasons for the rejection stated in MATA's response. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, MATA will respond as soon as practicable.

7. Actual substitution by the Contractor may not be made prior to MATA approval. Once notified of MATA approval, the substitute subcontract must be executed within five (5) business days, and a copy submitted to the Compliance Officer, DBE Program.

5. Good Faith Efforts

In order to be responsive, a Proposer must make good faith efforts to meet the DBE participation goal set forth in the contract. The Proposer must document the good faith efforts it made in that regard. Thus, the Proposal submitted to MATA must be accompanied by written documentation prepared by the Proposer evidencing all of its reasonable good faith efforts toward fulfilling the goal. These efforts must be active steps, ones that could reasonably be expected to lead to sufficient DBE participation to meet the contract DBE participation goal. Mere *pro forma* efforts are not acceptable and will be rejected by the Compliance Officer, DBE Program.

Good Faith Efforts require that the Proposer consider all qualified DBEs, who express an interest in performing work under the contract. This means that the Proposer cannot reject a DBE as unqualified unless the Proposer has sound reasons based on a thorough investigation of the DBE's capabilities. Further, the DBE's standing within its industry, membership in specific groups, organizations or associations and political or social affiliation (for example, union vs. non-union employee status) are not

legitimate causes for the rejection or non-solicitation of Proposals in the Contractor's efforts to meet the contract DBE participation goal.

The following are illustrative of factors, which will be considered in judging whether or not the Proposer has made adequate good faith efforts:

- a. Attendance at any pre-Proposal meetings that were scheduled by MATA to inform DBEs of participation opportunities.
- b. Advertisement in general circulation, trade association, or minority and female-focused media concerning participation opportunities. Adequate time for advertisement and sufficient DBE response will be considered.
- c. Written notification to a reasonable number of specific DBEs that their participation in the contract is solicited in sufficient time to allow them to participate effectively.
- d. Follow-up of initial solicitations of interest by contacting DBEs to determine with certainty if they were interested.
- e. Documentation of efforts to negotiate with DBEs for specific sub-contracts including at a minimum:
 - i. The names, addresses, and telephone numbers of DBEs that were contacted and the date(s) of contract.
 - ii. A description of the information provided to the DBEs regarding the plans and specifications for portions of the work to be performed.
 - iii. A statement explaining why additional agreements with DBEs were not reached.
- f. For each DBE the Proposer contacted but rejected as unqualified, the reason for the Proposer's conclusion. This may include documentation of price comparisons. Receipt of a lower quotation from a non-DBE will not in itself excuse a Proposer's failure to meet the contract goal.
- g. Documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the Proposer or MATA.
- h. Documentation of efforts to utilize the service of available minority community organizations or other organizations that provide assistance in the recruitment and placement of qualified DBEs.
- i. Documentation that the Proposer selected portions of the work likely to attract DBE participation (including dividing contracts into economically feasible units to facilitate participation).
- j. Evidence that adequate information was provided to interested DBEs about the plans, specifications and requirements of the contract, and that such information was communicated in a timely manner.

Any Proposer which MATA determines to have failed to fulfill the obligations of this section will be deemed non-responsible and will not be eligible for contract award.

MATA will not award a contract to any Proposer who does not meet the contract DBE participation goal or show good faith efforts to meet the goal. Thus, it is essential that all Proposers submit ALL relevant documentation concerning the DBE goal and/or good faith efforts in the envelope or package containing their sealed Proposal.

6. Procedure to Determine Proposer Compliance

The Proposer must complete and sign the Letter of Intent to Perform as a DBE. The Letter of Intent must also be signed by any DBEs (prime or subcontractor). A separate Letter of Intent must be included for each DBE included in the Proposal. It MUST be submitted with the sealed Proposal. In addition, any documentation evidencing the Proposer's good faith efforts to meet the contract DBE goal must be submitted with the Proposal. Any Proposals submitted without a completed and executed Letter of Intent and/or evidence of good faith efforts, if applicable, will be deemed non-responsive and will be rejected by MATA.

a. Letters of Certification

1. A copy of each proposed DBE firm's current Certificate of Certification from the Uniform Certification Agency or the Tennessee Department of Transportation (TDOT) should be attached to the Letter of Intent to Perform as a DBE. **A firm which is in the process of certification or which is not currently certified at the date the proposals are due cannot be counted as a DBE as set forth in 49 CFR Part 26.55.**

2. All DBEs are certified to perform work in a specific specialty or specialties. The DBE firm's scope of work set forth on the Letter of Intent and Schedule of DBE Participation must conform to its stated area of specialization.

b. Joint Ventures

1. Where the Proposer proposes to include in its Proposal a DBE, which is a joint venturer, the Proposer must submit a fully executed copy of the joint venture agreement with its Proposal. The joint venture agreement must show that the DBE firm will be responsible for a clearly defined portion of the work to be performed, and that the DBE firm's capital contribution, control, management, risks and profits are commensurate with its ownership interest.

Further, the proposed joint venture agreement shall include specific details related to: 1) contributions of capital and equipment; 2) work items to be performed by the DBEs own forces; 3) work items to be performed under the supervision of the DBE; 4) the DBE management, supervisory and operating personnel to be dedicated to the performance of the project; and 5) the authority of each joint venturer to contractually obligate the joint venture and to expend funds.

Failure to submit a copy of the joint venture agreement will cause the firm to be considered by MATA to be non-responsive.

7. Reporting Requirements During the Term of the Contract

a. The Proposer shall, within five (5) business days of contract award, or prior to any work being performed, execute formal subcontracts or purchase orders with the DBE firms included in the Proposal. These written agreements shall be made available to the Compliance Officer upon request. All contracts between the Proposer and its subcontractors must contain a prompt payment clause as set forth in Section 8 herein.

b. During the term of the contract, the Proposer shall submit regular "DBE Participation Report" in a form acceptable to MATA. The frequency with which these reports are to be submitted will be determined by the Compliance Officer but in no event will reports be required less frequently than quarterly. In the absence of written notice from the Compliance Officer, the Proposer's first "DBE Participation Report" will be due sixty (60) days after the date of contract award, with additional reports due monthly thereafter.

c. The address for the Compliance Officer, DBE Program, is: MATA, Attn: Compliance Officer/DBE Program, 1370 Levee Road, Memphis, TN 38108.

8. Prompt Payment to Subcontractors

a. Prime Contractors are required to pay all subcontractors, both DBE and non-DBE, for all work which the subcontractor has satisfactorily completed, no later than ten (10) business days after the prime Contractor received payment from MATA.

b. In addition, all retainage amounts must be returned by the prime Contractor to the subcontractor no later than fourteen (14) business days after the subcontractor has satisfactorily completed its portion of the contract work.

c. A delay or postponement of payment to the subcontractor requires good cause and prior written approval of the Compliance Officer and the Project Manager.

d. All prime Contractors are required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.

e. MATA will not reimburse Contractors for work performed unless and until the prime Contractor ensures that the subcontractors are promptly paid for the work they have performed to date as evidenced by the submittal of the "DBE Subcontractor Payment Status Report" with canceled checks/wire transfers as supporting documentation.

f. MATA will consider failure to comply with these prompt payment requirements a contract violation, which may lead to any remedies permitted under law, including but not limited to, contract debarment.

ATTACHMENT 1
SECTION 00700
GENERAL CONTRACT PROVISIONS

INDEX OF SECTION 00700

GENERAL PROVISIONS FOR CONSTRUCTION

1. Non-Collusion
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3. Third Party Beneficiary
4. Clarification of Specifications- Approved Equal
5. Bid Withdrawal
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7. Taxes, Permits and Licenses
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19. Patent Rights
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33. False or Fraudulent Statements or Claims
34. No Contingency Fees
35. Copeland "Anti-Kickback" Act
36. Excluded Facilities
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57. Contract Subletting
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59. Federal Changes
60. Recycled Products
61. Incorporation of Federal Transit Administration (FTA) Terms
62. Disputes, Breaches, Defaults or Other Litigation
63. Prompt Payment
64. National Intelligent Transportation Systems Architecture and Standards
65. Veterans Employment

1. **Non-Collusion** - The Bidder guarantees that the Bid submitted is not a product of collusion with any other Bidder and no effort has been made to fix the Bid price of any Bidder or to fix any overhead, profit, or cost element of any Bid price. An Affidavit of Non-Collusion, as per attached format, must be signed and submitted with Bid. (Exhibit I)
2. **Time of Completion** - The work shall begin immediately upon date indicated on the Notice-to-Proceed and shall be completed in accordance with the schedule provided for each Task Order.
3. **Third Party Beneficiary** - It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of any part of the Contract to create the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.
4. **Clarification of Specifications - Approved Equal**
 - a. Clarification of Specifications, and Protest of Specifications must be received by MATA, **IN WRITING, NO LATER THAN NOVEMBER 15, 2022 AT 4:00 P.M. LOCAL TIME, TO ALLOW ANALYSIS OF THE REQUEST.** Any request for an approved equal or protest of the specifications must be fully supported with catalog information, specifications, and illustrations or other pertinent information as evidence that the substitute offer is equal to or better than the specifications' requirement. Where an approved equal is requested, the CONTRACTOR must demonstrate the quality of his product to the Authority and must furnish sufficient information to enable the Authority to determine whether the CONTRACTOR's product is or is not equal to that specified. **Such requests may be emailed to smacilin@matatransit.com or faxed to (901) 274-5866 or (901) 272-2912.**
 - b. MATA's replies to requests under paragraph (a) above will be post-marked at least fourteen (14) days before the date scheduled for Bid opening.
 - c. A notice of approved equals shall be furnished to all parties receiving specifications so that all Bidders may prepare their Bid accordingly.
 - d. Appeal from the decisions of MATA to approve or disapprove approved equal status shall be submitted in writing to the Chief Executive Officer, MATA, 1370 Levee Road, Memphis, TN 38108, not later than five days from the date of MATA's decision. The appeal shall, at a minimum, identify the decision in question, specify all reasons why the appealing party disagrees with the decision, and shall include all facts and justification, including technical information, in support of its position. The Chief Executive Officer may request additional information from the appealing party, and information or a response from the Bidders which shall likewise be submitted in writing to the Chief Executive Officer not later than 10 days from the date of MATA's request. So far as practicable, appeals will be decided upon the basis of the written appeal, information and written response submitted by the appealing party and other Bidders; all parties are urged to make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be deemed by MATA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event, the appeal will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by MATA, the Chief Executive Officer shall either (a) render a decision which shall be final and advise all interested parties of same in writing, or (b) at the sole election of the Chief Executive Officer, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules

of evidence or procedure. Following the informal hearing, the Chief Executive Officer shall render a decision, which shall be final and advise all interested parties thereof in writing.

- e. Changes in the specifications will be made by written addendum by MATA, and will be forwarded to all persons and firms to whom Bid documents have been furnished.

5. Bid Withdrawal -

- a. Each and every Bidder who submits his Bid specifically waives any right to withdraw it except as hereinafter provided. Bidders will be given permission to withdraw any Bid after it has been deposited with MATA, provided any Bidder makes its request by telephone, telegraph, or in writing, 24 hours before the time Bids are due. Requests pertaining to withdrawals by telephone or telegraph must be confirmed in writing by the Bidder and must reach the Office of the Chief Executive Officer of MATA not later than one (1) hour prior to the time fixed for submission of Bids.

- b. No Bidder may withdraw his Bid within 90 days after the date Bids are due.

6. Bid Rejection - MATA reserves the right to waive any minor Bid Informalities or irregularities received which do not go to the heart of the Bid or prejudice other Bidders, or to reject, for good and compelling reasons, any and all Bids submitted. Conditional Bids, or those, which take exception to the specifications, may be considered non-responsive and may be rejected.

7. Taxes, Permits and Licenses

- a. Tax Exemption – MATA is exempt from payment of all Federal, State, and local taxes in connection with the project. This exemption cannot be delegated. Taxes which the CONTRACTOR must pay shall be included in Bid prices. Invoices presented to MATA shall not be marked up for taxes. MATA will provide necessary tax exemption certificate to manufacturer, if requested. CONTRACTOR shall include in his/her Bid such taxes as he/she will be required to pay; however, there shall be no tax added to invoices submitted to MATA.

- b. Permits. The Contractor shall secure and pay for all permits in effect at the time of the execution of this Contract. Contractor shall be responsible for all inspections required by the City or County in conjunction with the issuance of said permits in effect at the time of execution of this Contract. Contractor shall secure and pay for all governmental fees, licenses and other permits necessary for the lawful and proper execution and completion of the work in effect at the time of execution of this Contract.

- c. Licenses. All Bidders must be licensed contractors as required by Title 62, Chapter 6, of the Tennessee Code Annotated. Bidder's license number, expiration date and that part of the classification applying to the Bid must appear on the envelope containing the Bid, otherwise the Bid will not be opened. Additionally, the Bidder shall include the name, license number, expiration date thereof, and license classification of the contractor applying to the Bid for electrical, plumbing or heating, ventilation or air conditioning, on the outside of the envelope containing the Bid; otherwise, the Bid shall not be opened or considered. In the event the aforementioned classifications are not applicable to the project, the Bidder shall indicate not applicable (NA) on the appropriate line.

8. Bid Evaluation -

- a. Consideration will be given to Bidder's previous experience, price, financial responsibility of Bidder, responsiveness to these specifications, including level of participation of DBEs.

- b. Bidders may be required to submit duplicate sworn statements of their financial responsibility, technical qualifications, and performance record before a Contract can be awarded to them.
 - c. MATA reserves the right to award Bids singularly or collectively on any of the Bid items.
 - d. The Contract shall be awarded to the lowest and best Bidder.
9. **Bid Form** - Bids must be submitted on the form provided. Each item should be listed separately on the form. Bids submitted in any other form may be considered non-responsive and may be rejected. Bids may be submitted on any or all items in this Bid request.
10. **Protest Procedures** - Protests may be made by prospective Bidders whose direct economic interest would be affected by the award of a Contract, or by failure to award a Contract. MATA will consider all protests requested in a timely manner regarding the award of a Contract, whether submitted before or after an award. All protests are to be submitted in writing to the Contracting Officer, Memphis Area Transit Authority, 1370 Levee Road, Memphis, TN 38108. Protest submissions should be concise, logically arranged, and clearly state the grounds for the protest. Protests must include at least the following information:
- 1. Name, address, and telephone number of protestor.
 - 2. Identification of the solicitation or Contract Number.
 - 3. A detailed statement of the legal and factual grounds of protest, including copies of relevant documents.
 - 4. A statement as to what relief is requested.

Protests must be submitted to MATA in accordance with these procedures and time requirements. Protests must be complete and contain all issues that the protestor believes relevant.

- a. Bid protests alleging restrictive specifications or improprieties which are apparent prior to Bid closing time or receipt of Bids must be submitted in writing to the Contracting Officer and must be received seven days prior to Bid closing time or receipt of Bids. If the written protest is not received by the time specified, Bids may be received and award may be made in the normal manner unless the Contracting Officer determines that remedial action is required. Oral protests not followed up by a written protest will be disregarded. The Contracting Officer may request additional information from the appealing party and information or a response from other Bidders, which shall likewise be submitted in writing to the Contracting Officer not later than 10 days from the date of MATA's request. So far as practicable, appeals will be decided upon the basis of the written appeal, information, and written response submitted by the appealing party and other Bidders; all parties are urged to make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be deemed by MATA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by MATA, the Contracting Officer shall either (a) render a decision, or (b) at the sole election of the Contracting Officer, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedure. Following the informal hearing, the Contracting Officer shall render a decision, which shall be final and advise all interested parties thereof in writing but no later than 10 days from the date of the informal hearing.

- b. Bid protest against the making of an award by the MATA Board must be submitted in writing to the Contracting Officer and received by the Contracting Officer within seven days of the award by the MATA Board. The process for resolving protests listed above in Section (a) will be followed for any protest received under this section.

Notice of the protest and the basis therefore will be given to all prospective Bidders. In addition, when a protest against the making of an award by the MATA Board is received and it is determined to withhold the award pending disposition of the protest, the Bidders whose Bids might become eligible for award shall be requested before expiration of the time for acceptance, to extend or withdraw the Bid.

Where a written protest against the making of an award is received in the time specified, award will not be made prior to seven days after resolution of the protest unless MATA determines that:

1. The item(s) to be procured or service to be performed is urgently required.
2. Delivery or performance will be unduly delayed by failure to make award promptly; or,
3. Failure to make award will otherwise cause undue harm to MATA or the Federal Government.

- c. Protests made after contract award shall be received no later than seven calendar days afterwards. Protests received after award will be reviewed by the Contracting Officer and MATA's General Counsel.

In instances where the award has been made, the CONTRACTOR shall be furnished with the notice of the protest and the basis therefore. If the CONTRACTOR has not executed the Contract as of the date the protest is received by MATA, the execution of the Contract will not be made prior to seven days after resolution of the protest unless MATA determines that:

1. The item(s) to be procured or service to be performed is urgently required ;
2. Delivery or performance will be unduly delayed by failure to make award promptly; or,
3. Failure to make award will otherwise cause undue harm to MATA or the Federal Government.

The process for resolving protests listed above in Section (a) will be followed for any protest received under this section.

- d. Appeals and requests for reconsideration of the determination of the Contracting Officer of protests under (a), (b) and (c) must be submitted to the Chief Executive Officer and received within seven days after the date of the written determination by the Contracting Officer. The Chief Executive Officer may request additional information from the appealing party and information or a response from other Bidders, which shall likewise be submitted in writing to the Chief Executive Officer not later than 10 days from the date of MATA's request. So far as practicable, appeals will be decided upon the basis of the written appeal, information, and written response submitted by the appealing party and other Bidders; all parties are urged to make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be deemed by MATA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event, the appeal will proceed and will not be delayed due to the lack of a response. Upon receipt and review

of written submissions and any independent investigation deemed appropriate by MATA, the Chief Executive Officer shall either (a) render a decision, or (b) at the sole election of the Chief Executive Officer, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, the Chief Executive Officer shall render a decision, which shall be final and advise all interested parties thereof in writing but no later than 10 days from the date of the informal hearing.

e. Under certain limited circumstances, an interested party may protest to the Federal Transit Administration (FTA) the award of a Contract pursuant to an FTA grant. FTA's review of any protest will be limited to:

1. Alleged failure of MATA to have written protest procedures or alleged failure to follow such procedures.
2. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure which shall be submitted and processed in accordance with that Federal regulation.

f. Protestors shall file a protest with FTA not later than five working days after a final decision of MATA's Chief Executive Officer is rendered under the MATA protest procedure. In instances where the protestor alleges that MATA failed to make a final determination on the protest, the protestor shall file a complaint with FTA not later than five Federal working days after the protestor knew or should have known of MATA's failure to render a final determination on the protest.

g. **Submission of Protest to FTA**

1. Protests shall be filed with the appropriate FTA Regional Office with a Concurrent copy to MATA.
2. The protest filed with FTA shall:
 - (i) Include the name and address of the protestor.
 - (ii) Identify MATA project number and the number of the Contract Solicitation.
 - (iii) Contain a statement of the grounds for the protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
 - (iv) Include a copy of the local protest filed with MATA and a copy of the MATA decision, if any.

11. **Correspondence** - The Proposal is required to show on all correspondence with MATA and FTA, the following: RPF No. 23-07. Communication with MATA should be forwarded directly to **Shella MacIln, MATA, 1370 Leves Road, Memphis, TN 38108, or faxed to (901) 274-5866 or (901) 272-2912, or emailed to smaciln@matatransit.com .**

12. Miscellaneous -

- a. CONTRACTOR warrants that it has not been paid any bonus or commission for the purpose of obtaining this Contract.
- b. Except as otherwise set forth herein, this Contract shall be governed and construed in accordance with the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation, and enforcement of this Contract shall be instituted and litigated in the courts of the State of Tennessee located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee, located in Shelby County, Tennessee.
- c. The failure of MATA at any time to insist upon a strict performance of any terms, conditions, and covenants herein shall not be deemed a waiver of any subsequent breach or default of the terms, conditions, and covenants herein contained.
- d. CONTRACTOR shall not assign any interest or obligation in this Contract, and CONTRACTOR shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of MATA.
- e. Any proposed change or modification of this Contract shall be submitted in writing to MATA for its prior approval. All changes shall be by written agreement of MATA and CONTRACTOR.
- f. The CONTRACTOR acknowledges that MATA is managed and operated by Mid-South Transportation Management, Inc. (MTM). The CONTRACTOR shall cooperate with and abide by the instructions of MATA and MTM personnel.
- g. **Waiver.** No consent or waiver, express or implied, by the Authority to or of any breach or default by the Contractor in the performance of any of its obligations shall be deemed or construed to be a consent or waiver to or of any other breach or default. Failure on the part of the Authority to complain of any act or failure to act of the Contractor or to declare the Contractor in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of the Authority.
- h. **Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.
- i. **Article and Section Headings.** Article and Section headings contained in this Contract are for ease of reference only and shall not affect the interpretation or meaning of this Contract.
- j. **Parties in Interest.** This Contract shall inure to the benefit of and be binding upon the parties and their respective successors, assigns and legal representatives.
- k. **Assignment.** This Contract shall not be assigned, delegated or transferred in whole or in part by the Contractor (whether by assignment or novation) nor shall the Contractor assign any monies due or to become due to it without the prior written consent of the Authority.
- l. **Governing Law.** Except as otherwise set forth herein, this Contract shall be governed and construed in accordance with the laws of the State of Tennessee. All actions whether sounding in contract or in tort, relating to the validity, construction, interpretation, and enforcement of this Contract shall be instituted and litigated in the courts of the State

of Tennessee located in Shelby County, Tennessee, and in no other. In accordance herewith the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee, located in Shelby County, Tennessee.

- m. **Severability.** If any one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal, unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Contract, but it shall be construed as if such invalid, illegal or unenforceable provision had never been contained in it.
- n. **Time.** Time is of the essence to this Contract.
- o. **Notices.** All notices, requests, consents and other communications under this Contract shall be in writing and shall be deemed to have been duly given if hand-delivered or mailed by certified or registered mail, return receipt requested, postage prepaid:

(1) If to the Authority, addressed to:

Hubert Stewart
Contracting Officer
MATA
1370 Levee Road
Memphis, TN 38108

(2) If to the Contractor, addressed to:

Name:
Company:
Address:
City/State/Zip:

The Authority or the Contractor may at any time change the addresses to which copies of notices must be mailed by sending written notice to the other of such change in the manner provided.

- p. **Project Management Oversight.** In the event the FTA Administrator deems this Project to be a "major project" or determines that either FTA or the Authority would benefit from the FTA project management oversight program, the Contractor shall develop and prepare a project management plan sufficient for the Authority to submit to FTA and shall take all action reasonably necessary to ensure the Authority's full and timely compliance with the regulations found at 49 C.F.R. Part 633, as amended.

13. **Extent of Agreement** –

- a. The Bid submitted by the CONTRACTOR is incorporated herein by reference as fully set forth verbatim herein. In the event of conflict between this Contract and Bid, the provisions of this Contract shall control.
- b. The CONTRACTOR acknowledges that Federal Laws, regulations, policies, and related administrative practices applicable to the Project on the date the Contract is signed may be modified from time to time. The CONTRACTOR agrees that the most recent of such Federal requirements will govern the administration of the Project at any given time, except if FTA issues a written determination otherwise. Specifically, new Federal Laws, regulations, policies and administrative practices may be promulgated after the dates that MATA executed the FTA Grant Agreement, and may, by their terms, apply to that Grant Agreement and this Contract. Federal requirements may change, and the changed

requirements will apply to the Project and the Contract as required, unless the Federal Government determines otherwise.

- c. This Contract, except as set forth in the preceding paragraphs, represents the entire and negotiations, statements, instructions, and representations or agreements, whether written or oral. This Contract may not be modified, amended, or assigned except by integrated Agreement between MATA and the CONTRACTOR, and supersedes all prior written agreement duly signed by both parties.
- d. At the election of MATA, the invalidity or illegality of any provisions of this Contract, other than arising from the fiscal inability of MATA to pay the compensation due to the CONTRACTOR as same becomes due, as determined by a court of last resort of competent jurisdiction, shall not affect the validity of the remainder of this Contract, and this Contract shall remain in full force and effect as if such illegal or invalid provisions were not contained herein.
- e. Exhibits. All Exhibits described in this Contract shall be deemed to be incorporated and made a part of this Contract, except that if there is any inconsistency between this Contract and the provisions of any Exhibit, the provisions of this Contract shall control to the extent of the inconsistency.

14. Compliance With Applicable Law -

In the performance of its obligations pursuant to this Contract, CONTRACTOR shall comply with all applicable provisions of Federal, State, and local law in any manner effecting the conduct of the work and all prohibitive orders and instructions issued by the State and Federal Government regarding fortifications, military, and naval establishments and other areas.

15. Audit and Inspection -

- a. The CONTRACTOR shall maintain records, and the Contracting Officer, the U.S. Department of Transportation, the Tennessee Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under this Contract, have access to and the right to inspect all Project work and materials, and to examine any directly pertinent books, documents, papers, records and accounts of the Contractor, involving transactions related to this Contract, for the purpose of making audit, examination, excerpts and transcriptions.
- b. The CONTRACTOR further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Contracting Officer, the U.S. Department of Transportation, the Tennessee Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the Contract, have access to and the right to inspect all Project work and materials, and to examine any directly pertinent books, documents, papers, records and accounts of such subcontractor, involving transactions related to the subcontract, for the purpose of making audit, examination, excerpts and transcriptions.
- c. The CONTRACTOR shall maintain documentation for all charges against MATA under this Contract. The books, records, and documents of the CONTRACTOR, insofar as they relate to work performed or money received under the Contract, shall be maintained in conformity with generally accepted accounting principles for a period three full years from the date of final payment, and shall be subject to audit, at any reasonable time upon reasonable notice, by MATA, the State of Tennessee or the Comptroller of the Treasury or their duly appointed representatives, or a licensed independent public accountant. Further, the records shall be maintained for a period not less than that recommended in the Uniform Manual for

Development Districts of Tennessee, published by the Comptroller of the Treasury, State of Tennessee, but not less than three years from the date of final payment.

- d. In the event MATA is audited by any Federal or State agency, CONTRACTOR shall provide whatever records, information, and assistance as MATA may reasonably require.
- e. The CONTRACTOR shall provide information and assistance requested by MATA for progress reports required of MATA by Federal or State Government, or agencies.

16. Interests of Federal and State Governmental Officials –

- a. 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 therefrom.
- b. No part of the proceeds hereof 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 consultant to MATA in connection with any work contemplated or performed relative to this Contract.
- c. No payments to Officers or Employees of City or County. The Contractor warrants that no part of the funds provided by the City, County and State shall be paid directly or indirectly to any officer or employee of the City, County or State as wages, compensation or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to either the Contractor or other entity in connection with any work contemplated or performed relative to this Contract.

17. Environmental Requirements –

- a. Environmental Protection. The CONTRACTOR agrees to comply with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and other applicable Federal environmental protection regulations that may be promulgated at a later date. The CONTRACTOR agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and, as applicable, 23 U.S.C. § 326, pertaining to State responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 *et seq.*, November 15, 2006, and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.
- b. Air Quality (Applicable to Contracts Exceeding \$100,000) – Except to the extent the Federal Government determines otherwise in writing, the CONTRACTOR agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:
 - 1. The CONTRACTOR agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c); with U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A; and with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the CONTRACTOR agrees to implement each air quality mitigation or control

measure incorporated in the applicable documents accompanying the approval of the Project. The CONTRACTOR further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

2. U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the CONTRACTOR agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto.

3. The CONTRACTOR agrees to comply with the notice of violating facilities provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

c. Clean Water Requirements (Applicable to Contracts Exceeding \$100,000) - Except to the extent the Federal Government determines otherwise in writing, the CONTRACTOR agrees to comply with all Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

1. The CONTRACTOR agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

2. The CONTRACTOR agrees to comply with the notice of violating facilities provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. §§ 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

d. Use of Certain Public Lands. The CONTRACTOR agrees that in implementing its Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, unless the Federal Government makes the findings required by 49 U.S.C. § 303. The CONTRACTOR also agrees to comply with joint FHWA/FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.

e. Wild and Scenic Rivers. The CONTRACTOR agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system, with applicable implementing U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297, and with applicable implementing U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350.

f. Coastal Zone Management. The CONTRACTOR agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 through 1465.

- g. Wetlands. The CONTRACTOR agrees to comply with the protections for wetlands addressed in Executive Order No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note.
- h. Floodplains. The CONTRACTOR agrees to facilitate compliance with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management" 42 U.S.C. § 4321 note.
- i. Endangered Species and Fisheries Conservation. The CONTRACTOR agrees to comply with applicable protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 *et seq.*
- j. Historic Preservation. The CONTRACTOR agrees as follows:
 - 1. The CONTRACTOR agrees that in implementing its Project, it will not use any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places, unless the Federal Government makes the findings required by 49 U.S.C. § 303.
 - 2. The CONTRACTOR agrees to encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c as follows:
 - (a) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the CONTRACTOR agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of affected properties.
 - (b) The CONTRACTOR agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.
- k. Indian Sacred Sites. The CONTRACTOR agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996, in accordance with Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except to the extent that the Federal Government determines otherwise in writing.
- l. Mitigation of Adverse Environmental Effects. Should the Project cause or result in adverse environmental effects, the CONTRACTOR agrees to take all reasonable steps to minimize the impact of those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including 23 C.F.R. Part 771, 23 C.F.R. Part 774, and 49 C.F.R. Part 622. The CONTRACTOR agrees to implement all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and other documents required by 49 U.S.C. § 303). The CONTRACTOR also agrees to comply with any conditions the Federal Government might impose in a finding of no significant impact or a record of decision. The CONTRACTOR agrees that those mitigation measures are incorporated by reference and made part of the Contract. The CONTRACTOR agrees that any deferred mitigation measures will be incorporated by

reference and made part of the Contract as soon as agreement with the Federal Government is reached. The CONTRACTOR agrees that any mitigation measures agreed on may not be modified or withdrawn without the express written approval of the Federal Government.

18. **Energy Conservation** - The CONTRACTOR agrees to comply with applicable mandatory energy efficiency standards and policies under the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. As applicable, the CONTRACTOR agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, in compliance with FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

19. **Patent Rights- (Applicable to Contracts For Planning, Research, Development and/or Demonstration Projects Only) -**

a.

General. If any invention, improvement, or discovery of the CONTRACTOR or of any subcontractor, lessee, third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

b.

Federal Rights. The CONTRACTOR agrees that its rights and responsibilities, and those of each subcontractor, lessee, or other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subcontract, lease, or arrangement, as specified in 35 U.S.C. §§ 200 *et seq.*, and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401, irrespective of the status of the CONTRACTOR, subcontractor, lessee, third party contractor or other participant in the Project (*i.e.*, a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual).

c.

License Fees and Royalties. FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the CONTRACTOR has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

20. **Rights in Data- (Applicable to Contracts For Planning, Research, Development and/or Demonstration Projects Only)**

a. **Definition.** The term "subject data," as used in this Section 18 of the FTA Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" do not include financial reports, cost analyses, or other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the Contract for the Project:

(1) Except for its own internal use, the CONTRACTOR may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the CONTRACTOR authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Paragraph 18(b)(1) of the FTA Master Agreement, however, do not apply to a Contract with an institution of higher learning.

c. Federal Rights In Data and Copyrights. The CONTRACTOR agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of the FTA Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Contract for the Project, or under a subcontract, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Contract for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a CONTRACTOR, subcontractor, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the CONTRACTOR agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the CONTRACTOR agrees to provide other reports pertaining to the Project that FTA may request. The CONTRACTOR agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the CONTRACTOR to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of the FTA Master Agreement, FTA may make available to any FTA CONTRACTOR, subcontractor, or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of the FTA Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the CONTRACTOR's use when the costs thereof are financed with Federal assistance through an FTA capital program.

e. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the CONTRACTOR has no obligation to the Federal Government with

respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

f. **Hold Harmless.** Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the CONTRACTOR agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the CONTRACTOR of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The CONTRACTOR shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

g. **Restrictions on Access to Patent Rights.** Nothing in Section 18 of the FTA Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. **Data Developed Without Federal Funding or Support.** In connection with the Project, the CONTRACTOR may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of the FTA Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the CONTRACTOR understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

i. **Requirements to Release Data.** To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, the CONTRACTOR understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records).

21. **Vendor Responsibility** - It is the intent of these specifications to provide for goods of first quality and the workmanship must be the best obtainable in the various trades. The design of the goods, which the manufacturer proposes to furnish, must be of substantial and durable construction in all respects. No advantage shall be taken by the Bidder or manufacturer in the omission of any part or detail, which goes to make the product complete and ready for installation and use.

The vendor shall assume responsibility for all materials used in the Bid item whether the vendor manufactures the same or purchased ready-made from a source outside the vendor's company.

22. **Delivery** - Delivery shall be in accordance with technical specifications.

23. **Project Schedule** - The successful Bidder shall provide a detailed schedule for performance of the work.

24. **Buy America Requirements (Applicable to Contracts Exceeding \$100,000)** - The CONTRACTOR agrees to comply with 49 U.S.C. § 5323(j), FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and implementing guidance FTA may issue. A Buy America Certificate (Exhibit II), as per attached format, must be completed and submitted with the Bid or the Bid will be considered non-responsive.

A waiver from the Buy America provision may be sought by MATA if grounds for the waiver exist. Section 165a of the Surface Transportation Assistance Act of 1982 permits FTA's participation in this Contract only if iron, steel, and manufactured products used in the Contract are produced in the United States.

25. Debarment, Suspension, and Other Related Matters (Applicable to Contracts Exceeding \$25,000) – Unless otherwise permitted by law, any person that is debarred, suspended, or voluntarily excluded may not take part in the federally covered transaction, either as a participant or a principal, during the period of debarment, suspension, or voluntary exclusion. Accordingly, neither FTA nor MATA may enter into any transaction with such debarred, suspended, or voluntarily excluded persons during such period.
26. Prohibited Interests - No member, officer, or employee of MATA, MTM, RATP Dev USA., or the City of Memphis during his or her tenure or one year thereafter shall have interests, direct, or indirect in this Contract or the proceeds thereof, or if a conflict, real or apparent, as defined in MATA's Code of Ethics, would be involved.
27. Termination of Contract -
 - a. MATA may terminate this Contract without cause by giving fifteen (15) days written notice to the CONTRACTOR thereof, and specifying the effective date of termination.

If the Contract is terminated by MATA as provided herein, the CONTRACTOR will be paid for its satisfactory services completed through the date of termination specified by MATA.
 - b. If, through any cause, the CONTRACTOR shall fail to fulfill in timely and proper manner its obligations under this Contract, or shall violate any of the covenants, agreements, or stipulations of this Contract, MATA shall thereupon have the right to terminate this Contract by giving written notice to the CONTRACTOR for such termination and specifying the effective date of such termination. In the event of termination, the CONTRACTOR shall be entitled to just and equitable compensation for any satisfactory work through the date of termination specified by the MATA.
 - c. In the event of default by the CONTRACTOR, MATA shall be entitled to all of its reasonable expenses, and its costs to include, but not limited to its reasonable attorney's fees incurred by reason of such default.
 - d. In addition to the foregoing, MATA reserves the right to cancel any services or portion of services to be provided hereunder upon written notice to the CONTRACTOR specifying the canceled services and the effective date of such cancellation. In the event of such cancellation, the CONTRACTOR shall be compensated for satisfactory work completed and, further, the compensation due to the CONTRACTOR hereunder shall be reduced accordingly effective said cancellation date.
28. Employment of Contractor - MATA hereby agrees to engage the CONTRACTOR, and the CONTRACTOR hereby agrees to perform the services hereafter set forth in connection with the project.
29. Interest of the Contractor - The CONTRACTOR 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 CONTRACTOR further covenants that in the performance of this Contract no person having any such interest shall be employed.

30. Independent Contractor - The CONTRACTOR is at all times an independent contractor and in no wise shall be deemed to be in joint venture, partnership, or other relationship with MATA.

31. Indemnification - The CONTRACTOR shall indemnify, save, defend, and hold MATA, the City of Memphis, TN, Mid-South Transportation Management, Inc., and FirstTransit, Inc. their officers, agents and employees free from all losses, damages, claims, and expenses in any wise arising or resulting from the actions and omissions of the CONTRACTOR, its employees, agents, or contractors in the performance of its services hereunder.

A. Indemnification of the CONTRACTOR. By executing this Contract, the CONTRACTOR assumes the entire responsibility and liability for any and all claims, damage or injury of any kind or nature (including death) to all persons, whether employees of the CONTRACTOR or otherwise, and to all property including, but not limited to, the replacement cost and loss of use of property), caused by, resulting from, arising out of, or occurring in connection with the performance of the work by the CONTRACTOR, its agents, servants, employees, or subcontractors or anyone directly or indirectly employed by any of them for whose acts any of them may be liable.

B. If any claim is made against the Authority for any damage, injury, death, or loss, whether such claim is based upon the CONTRACTOR's or its agents', servants', employees' or subcontractors' (including any contractors or subcontractors employed by MATA and whose performance and work is subject to the supervision and control of CONTRACTOR) alleged active or passive negligence or participation in the wrong, or upon any alleged breach of any statutory party or alleged breach of any obligation on the part of the CONTRACTOR, its agents, servants, employees or subcontractors, or in any other instance for which the CONTRACTOR has assumed responsibility in this Contract, the CONTRACTOR shall indemnify, defend and hold harmless MATA, its officers, directors, agents, servants, staff and employees from and against any and all loss, expense, judgment, damage or injury (including attorney's fees and expenses) that MATA or its officers, directors, agents, servants, staff or employees may sustain as the result of any such claim. The CONTRACTOR shall assume on behalf of MATA, its officers, directors, agents, staff, servants and employees the defense of any action at law or in equity which may be brought against any of them on any such claim by retaining counsel approved by MATA, and shall pay on behalf of any of them the amount of any judgment with any costs or expenses incurred by any of them in connection with such claim.

C. Labor Indemnity. The CONTRACTOR shall indemnify, defend and hold harmless the Authority from any and all administrative and judicial actions (including reasonable attorney's fees related to any such action) incurred by MATA in connection with any labor related activity arising from the performance of the Work of the CONTRACTOR. As used in this Contract, "labor related activity" includes, but is not limited to, strikes, walk-outs, informational or organizational or organization picketing, use of placards, distribution of hand-outs, leaflets in or in the vicinity of any facility where MATA conducts business. MATA shall advise the CONTRACTOR if any labor related activity occurs and the CONTRACTOR shall arrange, at its expense, for the legal representation necessary to protect MATA with counsel approved by MATA.

32. Cost Analysis - MATA reserves the right to conduct a cost or price analysis for any purchase. MATA may be required to perform a cost analysis when competition is lacking for any purchase. Sole source procurements or procurements which result in a single Bid being received will be subject to a cost 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 Bid prices. MATA may require a pre-award audit, and potential contractors shall be prepared to submit data relevant to the proposed work which will allow MATA to sufficiently determine that the proposed price is fair, reasonable, and in accordance

with Federal, State, and local regulations. Procurements resulting in a single Bid will be treated as a negotiated procurement and MATA reserves the right to negotiate with the single Bidder to achieve a fair and reasonable price. If both parties cannot agree upon a negotiated price, MATA reserves the right to reject the single Bid.

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

33. False or Fraudulent Statements or Claims - The CONTRACTOR acknowledges and agrees that:

- a. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. Department of Transportation (DOT) regulations "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the Project. Accordingly, by executing the Contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make in connection with the Project covered by the Contract. In addition to other penalties that may apply, the CONTRACTOR also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.
- b. If the CONTRACTOR makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of 49 U.S.C. § 5323(1), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

34. No Contingency Fees - The CONTRACTOR shall warrant that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, bonus brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business, for the breach or violation of which warranty MATA shall have the right to annul said Contract without liability or, in its discretion, to deduct from the Contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

35. Copeland "Anti-Kickback" Act, as amended. The CONTRACTOR shall comply with the Copeland "Anti-Kickback" Act, 18 U.S.C. 874 and 40 U.S.C. 276c, and U.S. Department of Labor (DOL) regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States", 29 C.F.R. Part 3. In addition to other requirements that may apply:

a. The CONTRACTOR will not induce, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which that employee is otherwise entitled.

b. MATA agrees to report every suspected or reported violation of the Copeland "Anti-Kickback" Act or its Federal implementing regulations to FTA.

36. Excluded Facilities - The CONTRACTOR shall comply with the provisions of 40 CFR Part 15 which prohibits the use of facilities included on the EPA list of violating facilities.

37. **Identical Bids** - In the unlikely event that identical responsive Bids are received, MATA will negotiate with the bidders who are tied and request revised bids until a low bid is attained. MATA will proceed with the process for awarding a contract to the low bidder.
38. **Bonding Requirements** - The CONTRACTOR agrees to provide bid guarantee, contract performance, and payment bonds as provided by Federal regulations and to the extent determined adequate by FTA in writing, and follow any other construction bonding provisions in FTA directives, except to the extent that FTA determines otherwise in writing
- a. **Bid Bond** - As security for the acceptance of the Contract, each Bid shall be accompanied by a Bidder's bond (bonding company must be acceptable to MATA) or certified or cashier's check in the amount of five percent (5%) of the Bid drawn payable to the purchaser. Such Bid deposits of all Bidders will be held by purchaser until all Bids submitted shall have been evaluated, and the Bids have either been rejected in whole or in part, or the award of the Contract or Contracts has been made. The Bid deposit of the successful Bidder will be held until the Contract is duly executed and the CONTRACTOR has provided the necessary Performance Bond required. Bid deposits will be returned to the unsuccessful Bidders upon the award of the Contract. If the successful Bidder to whom the Contract shall have been awarded fails or refuses to execute the Contract within 14 days after the award of the Contract, the amount of the Bid deposit shall be forfeited to and retained by MATA as liquidated damages for such neglect or refusal, and MATA may proceed to award the Contract with another company. The bonding company must have a local office, and the name, address and phone number of the local agent must be shown.
- b. **Performance Bond** - The successful Bidder shall furnish a Payment and Performance Bond in an amount equal to one hundred percent (100%) of the Contract sum as security for the faithful performance of this Contract. Form of instrument shall be standard City of Memphis form, a copy of which is attached (Exhibit V). Bond shall be furnished through an agent domiciled and legally authorized to do business in the State of Tennessee and delivered to MATA no later than the date of execution of the Contract. Surety company shall be one acceptable to MATA with a local office, and the name, address and phone number of the local agent must be shown.
39. **Lobbying** - Federal regulations require MATA to include certifications from contractors. Accordingly, the CONTRACTOR must sign the attached certification. (Exhibit IV)

By executing this Contract, the CONTRACTOR certifies to the best of its knowledge and belief that:

- a. No Federal appropriated funds have been paid or will be paid on behalf of the undersigned 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 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 Federal appropriate 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 Federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Office of Management and Budget Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The CONTRACTOR shall insert the language of this certification in all subcontracts, and require that all subcontractors at any tier 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 Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. This applies to procurements of \$100,000 or more.

40. Equal Employment Opportunity

A. Nondiscrimination - Pursuant to Department of Labor regulations at 41 C.F.R. 60-1.4 (b) and 60-1.4 (c):

- (1) The Contractor agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, "41 C.F.R. Chapter 60, that is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, cooperative agreement, contract, loan, insurance, or guarantee, or undertaken pursuant to a Federal program involving the grant, cooperative agreement, contract, loan, insurance, or guarantee, the following equal opportunity clause:
- (2) Prime Contracts: Each Federal contracting agency is required include the Equal Opportunity (EO) clause found at 41 CFR 60-1.4(a), and the Affirmative Action (AA) clauses found at 41 CFR 60-250.4 and 60-741.4 in all nonexempt construction contracts.
- (3) Omission of contract clauses from contract: The EO/AA clauses may be expressly included in the contracts or incorporated by reference (41 CFR 60-1.4(d), 60-250.22 and 60-741.22). The clauses are, however, a part of the construction contracts even if they are not physically incorporated in the contract document (41 CFR 60-1.4(e), 41 CFR 60-4.9, 41 CFR 60-250.23 and 41 CFR 60-741.23).
- (4) Segregated Facilities: General. In order to comply with his obligations under the equal opportunity clause, a prime Contractor or Sub-Contractor must insure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, or national origin cannot result. He may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. His obligation extends further to insuring that his employees are not assigned to perform their services at any location, under his control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities" as used in this section means waiting rooms, work areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees.

Certification by prime Contractors and Sub-Contractors. Prior to the award of any nonexempt government contract or subcontract or federally assisted construction contract or subcontract, each agency or applicant shall require the prospective prime contractor and each prime contractor and subcontractor to submit a certification, in the form approved by the Director, that the prospective prime contractor or subcontractor does not and will not maintain any facilities he provides for his employees in a segregated facilities are

maintained; and that he will obtain a similar certification in the form approved by the Director, prior to the award of any nonexempt sub-contract.

(5) The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, age, sex, disability or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, age, sex, disability or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(6) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, age, sex, disability or national origin.

(7) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(8) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 and of the rules, regulations, and relevant orders of the Secretary of Labor.

(9) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Federal Transit Administration, (FTA) and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(10) In the event of the Contractor's noncompliance with the non-discrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by the rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

(11) The Contractor will include the portion of the sentence immediately preceding paragraph (a) the provisions of paragraphs (5) through (11) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 so that such provisions shall be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Labor or FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary of Labor or FTA, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(12) The Contractor shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, as amended, with any contractor debarred from, or who has not demonstrated eligibility for Government contracts pursuant to the Executive Order.

B. The Contractor shall incorporate the above clauses (5-12) in each of its subcontracts, and further shall ensure that each of its non-exempt subcontractors does likewise.

41.

Labor Provisions.

A. Construction Contracts. Pursuant to Department of Labor regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5, the following provisions shall be incorporated in each construction contract of \$2,000 or more let by the Recipient in carrying out the Project.

(1) MINIMUM WAGES

a. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act, 29 C.F.R., Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached here to and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. § 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs that cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided at 29 C.F.R. § 5.5 (a) (4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 C.F.R. section 5.5 (a) (1) (ii) and the Davis-Bacon Poster WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. The Contracting Officer shall require that any class of laborers or mechanics that is not listed in the wage determination and that is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30 day period that additional time is necessary.

In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30 day period that additional time is necessary.

The wage rate (including fringe benefits where appropriate) determined pursuant to 29 C.F.R. § 5.5 (a) (1) (v) (B) or 29 C.F.R. § 5.5 (a) (1) (v) (C), shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- c. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any cost reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (2) Withholding. The Federal Transit Administration (FTA) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor, under this agreement or any other federal contract with the same recipient or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer

or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the Construction or Development of the FTA Assisted Project), all or part of the wages required by the Contract, FTA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and Basic Records

- a. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5 (a) (1) (iv) that the wages of any laborer or mechanic include the amount of any cost reasonably anticipated in providing benefits under a plan or program described in section 1 (b) (2) (B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees, under approved programs, shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registrations of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- b. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to FTA if FTA is a party to the Contract; but if FTA is not such a party, the Contractor will submit the payrolls to the applicant, sponsor or owner, as the case may be, for transmission to FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. § 5.5 (a) (3) (I). This information may be submitted in any form desired. Optional form WH-347 is available for this purpose and may be purchased from the superintendent of documents (Federal Stock No. 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- c. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
 - (i) That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. § 5.5 (a) (3) (I) and that such information is correct and complete.
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth at 29 C.F.R. part 3.
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage

- d. The weekly submission of a properly executed certification set forth on the reverse side of optional form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 C.F.R. § 5.5 (a) (3) (II) (B).
- e. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. §1001 and 31 U.S.C. § 231.
- f. The Contractor or subcontractor shall make the records required under 29 C.F.R. § 5.5 (a) (3) (I) available for inspection, copying, or transcription by authorized representatives of FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or make them available, FTA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.

(4) Apprentices and Trainees

- a. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a state apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- b. Trainees. Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed

pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the employment and training administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- c. Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under 29 C.F.R. Part 5 shall be in conformity with the Equal Employment Opportunity requirements of Executive Order no. 11246, as amended, and 29 C.F.R. part 30.
- (5) Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated herein by reference.
- (6) Contract Termination: Debarment. A breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. § 5.12.
- (7) Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and related acts contained in 29 C.F.R. Parts 1, 3, and 5 are incorporated herein by reference.
- (8) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (9) Certification of Eligibility.
 - a. By entering into this agreement or a third party contract financed under this agreement, the Contractor certifies that neither it (nor he nor she) nor any person or firm that has an interest in the contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12 (a) (1).
 - b. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of section 3 (a) of the Davis-Bacon Act or 29 C.F.R. § 5.12 (a) (1).

- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.
- (10) **Overtime Requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.
- (11) **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the requirements of 29 C.F.R. § 5.5 (b) (1), the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the U.S. (in the case of work done under Contract for the District of Columbia or a territory, to such district or to such territory) for liquidated damages, such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 C.F.R. § 5.5 (b) (1) in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by 29 C.F.R. § 5.5 (b) (1).
- (12) **Withholding for Unpaid Wages and Liquidated Damages.** FTA or the Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal Contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours And Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth at 29 C.F.R. § 5.5 (b) (2).
- (13) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in Section 42A1 through A13 of this agreement and also a clause regarding the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Section 42A1 through A12 of this agreement.
42. **Seismic Requirements** - The CONTRACTOR agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and with U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41, (specifically, 49 C.F.R. § 41.117), and any implementing guidance FTA may issue.
43. **Contract Security** - The Contractor agrees to follow the requirements of 49 C.F.R. § 18.36 (h) or 49 C.F.R. 19.48(c), as applicable, and Federal (FTA) guidelines with regard to Bid guarantees and bonding requirements.
44. **Employee Protections.** The CONTRACTOR agrees to comply, and assures compliance of each subcontractor, lessee, third party contractor, and other participant at any tier of the Project, with the following Federal laws and regulations providing protections for construction employees:
- (1) **Davis-Bacon Act, as amended**, 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions

Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5;

(2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926; and

(3) Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. Part 3.

45. Personal Liability of Public Officials - In carrying out any of the Contract provisions or in exercising any power or authority granted to him by this Contract, there shall be no liability upon the Project Manager, his/her authorized representatives, or any officials of the Owner, or Mid-South Transportation Management, Inc. (MTM), of the City of Memphis, TN (City), or FirstTransit, Inc. either personally or as an official of the Owner or of MTM. It is understood that in such matters they act solely as agents any representatives of the Owner or of MTM.

46. No Waiver of Legal Rights

A. Upon completion of the work, the Owner will expeditiously make final inspection and notify the Contractor of final acceptance. Such final acceptance, however, shall not preclude or estop the Owner from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the Owner be precluded or estopped from recovering from the Contractor or his/her surety, or both, such overpayment as may be sustained, or by failure on the part of the Contractor to fulfill his/her obligations under the contract. A waiver on the part of the Owner of any breach of any part of the Contract shall not be held to be a waiver of any other or subsequent breach.

B. The Contractor, without prejudice to the terms of the Contract, shall be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty or guaranty.

47. Insurance

A. Contractor to Maintain Insurance. The Contractor shall purchase and maintain in a company or companies licensed to do business in the State of Tennessee such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

(1) claims under worker's compensation, disability benefit and other similar employee benefit acts. The Contractor shall provide Worker's Compensation coverage in accordance with the Statutory Requirements of the State of Tennessee and shall require all subcontractors to do likewise. The Authority and the City of Memphis shall not be responsible for any Independent Contractor's payments under worker's compensation or other insurance premiums;

(2) claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

- (3) claims for damages because of bodily injury, sickness, or disease, or death of any person other than his employees;
- (4) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- (5) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- (6) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;
- (7) Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:
 - a. Premises--Operations (including Explosion, Collapse, Underground coverage, X-C-U as applicable)
 - b. Independent Contractor's Protective
 - c. Products and Completed Operations
 - d. Personal injury Liability with Employment Exclusion deleted.
 - e. Contractual--including specified provision for the Contractor's obligations
 - f. Owned, non-owned and hired motor vehicles
 - g. Broad Form Property Damage Including Completed Operations.
 - h. Umbrella Excess Liability.

B. Amount of Insurance - The insurance required by Section 47(A) shall be written for not less than the following, or greater if required by law:

- (1) Worker's Compensation--Statutory
Employer's Liability: \$500,000
- (2) Comprehensive general liability, including:

Premises-Operations
Independent Contractor's Protective
Product and Completed Operations
Broad Form Property Damage
Contractual Liability Endorsement

Combined single limits for bodily injury and property damage;

\$1,000,000 Each occurrence
\$1,000,000 General aggregate

Property damage liability insurance shall provide X, C, or U coverage.

- (3) Contractual Liability:

\$1,000,000 Each occurrence Combined Single Limit
\$1,000,000 General aggregate

- (4) Personal Injury, with Employment Exclusion deleted:

\$1,000,000 Each occurrence

(5) Comprehensive Automobile Liability:

Combined single limits for bodily injury and property damage:

\$1,000,000 Each occurrence

(6) Umbrella Excess Liability:

\$5,000,000 over primary insurance

(7) Railroad Protective Liability - (if work occurs on Riverfront Line adjacent to the Canadian National railroad tracks):

\$5,000,000 Each occurrence

\$10,000,000 Aggregate

This policy must name the Canadian National Railroad as an insured.

C. Contractual Liability Coverage- The insurance required by Section 47(A) shall include contractual liability insurance applicable to the Contractor's obligations under Section 32.

D. Proof of Coverage - Certificates of insurance acceptable to the Authority shall be filed with the Authority prior to commencement of the Work and approved by the Authority and the City of Memphis. The Contractor shall not allow any subcontractors to commence work on its subcontract until all similar insurance required of the subcontractors has been so obtained and approved. These Certificates shall each contain a provision that it will not be subject to cancellation, termination or change except after thirty (30) days prior to written notice to the Authority and the City of Memphis and that not less than thirty (30) days notice of non-renewal will be provided to the Authority and the City of Memphis by certified mail. One copy of the Certificates herein required shall be furnished for each copy of the Contract. The Certificate shall specifically set forth evidence of all coverage required by Sections 47(A), (B) and (C). The Contractor shall furnish to the Authority and the City of Memphis copies of any endorsements that are subsequently issued amending coverage or limits.

E. Additional Insureds - The Contractor shall cause the Authority, the City of Memphis, Shelby County Government, Mid-South Transportation Management, Inc., First Transit, Inc., their respective officers, directors, staffs and employees, to be named on each of the Contractor's certificates of insurance as additional named insureds.

F. Contractor's Insurance Primary - Any coverage applicable to Owner under Contractor's insurance policies shall be primary and non-contributing with any insurance maintained by Owner in its own name and on its own behalf. Copies of endorsements to Contractor's policies shall be provided to Owner.

G. The Right of the Authority to Maintain Insurance - In the event the Contractor fails to furnish and maintain the required insurance or to furnish certificates of insurance, the Authority shall have the right, at its option, to terminate this Contract or to take out and maintain such insurance, and hold the Contractor liable for the cost. Compliance by the Contractor with the requirements of this Section 47 shall in no way relieve the Contractor from liability by it under any provision of this Contract or the Contract Documents.

H. Property Insurance - Contractor shall, at its own expense, procure and maintain for the duration of the project:

(1) Builder's Risk Insurance.

Coverage provided by this policy shall be written:

- a. to apply to Authority, Contractor, subcontractors and materialmen as insureds as their interests may appear at time of loss;
- b. to require a mutual waiver of subrogation clause whereby the Authority and Contractor waive any and all rights of recovery against one another for damages resulting from loss insured pursuant to this Section;
- c. to authorize Contractor to adjust and settle any and all claims on behalf of all involved insureds; and

This insurance shall be for a Limit of Liability for any one occurrence of \$150,000 subject to deductible amounts acceptable to Contractor.

- (2) Insurance for Protect Property While Outside the United States and Canada - If any project property is in transit or is located outside the continental United States or Canada for any reason, Contractor shall arrange to insure such property for its full replacement value.
- I. (1) The Contractor shall be responsible from the time of signing this contract or from the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind to persons or property resulting from this work.
 - (2) Hold Harmless - In addition to the liability imposed upon the Contractor on account of bodily injury (including death) or property damage suffered through the Contractor's negligence, which liability is not impaired or otherwise affected hereby, the Contractor assumes the obligation to protect, defend, indemnify and hold the Authority, the City of Memphis, Shelby County Government, Mid-South Transportation Management, Inc., FirstTransit, Inc., their respective officers, directors, staffs and employees free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of any kind and character in connection with or arising directly or indirectly out of this contract and/or the performance hereof by act or omission of the Contractor or subcontractor, or anyone either (1) directly or indirectly employed or (2) under the supervision of any of them in the prosecution of the work included in this contract.
 - (3) Premium and Reporting Responsibilities - Contractor is responsible for the payment of all insurance policy premiums, and all policies shall be endorsed to provide that there will be no recourse against the Authority or the City of Memphis for payment of premium. The Contractor is also responsible for all reporting to the insurer required by such policies.
- J. Insurance Coverages - The following coverages are to be included in the foregoing contract. Any exclusions from these coverages shall be noted on the Certificate of Insurance provided to the Authority:

General Liability - Contractor's General Liability form including Broad Form General Liability Extension Endorsement or its equivalent (including Premises and Operations; Independent Contractor's Protective; Products and Completed Operations; Broad Form Property Damage; Fire Legal Liability; Personal and Advertising Liability; Explosion, Collapse, and Underground Coverage and naming the City of Memphis as Additional Insured:

\$1,000,000 General Aggregate
 \$1,000,000 Products - Completed/Operations
 \$1,000,000 Personal and Advertising Injury
 \$1,000,000 Each Occurrence

- \$ 50,000 Fire Damage (Any one fire)
- \$ 5,000 Medical Expense (Any one person)

Property Insurance - Contractor shall be responsible for maintaining any and all property insurance on their own equipment.

Contractor is required to provide copies of the insurance policies upon request.

48. Nondiscrimination - Title VI of the Civil Rights Act of 1964. The CONTRACTOR will comply and will assure the compliance by subcontractors under this project with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d *et seq.*, and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21 and the assurances by MATA pursuant thereto.
49. Disadvantaged Business Enterprises - To the extent authorized by Federal law, the CONTRACTOR agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:
 - a. The CONTRACTOR agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.
 - b. The CONTRACTOR agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subcontract, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its Contract and shall comply with the requirements of 49 C.F.R. Part 26. The CONTRACTOR agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subcontracts, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT.
50. Access Requirements for Persons with Disabilities. The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The CONTRACTOR also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:
 - a. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
 - b. U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
 - c. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

- d. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services,"28 C.F.R. Part 35;
- e. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,"28C.F.R. Part 36;
- f. U.S. General Services Administration (GSA) regulations, "Accommodations for the Physically Handicapped,"41 C.F.R. Subpart 101-19;
- g. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,"29 C.F.R. Part 1630;
- h. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,"47 C.F.R. Part 64, Subpart F; and
- i. FTA regulations, "Transportation for Elderly and Handicapped Persons,"49 C.F.R. Part 609; and
- j. Any implementing requirements FTA may issue.

51. Environmental Justice. The CONTRACTOR agrees to facilitate compliance 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; and DOT Order 5620.3, "Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

52. Liquidated Damages

If the Contractor is delayed at any time in the progress or completion of the contract by any act or neglect of MATA or an employee of MATA, or by a separate contractor employed by MATA, or by changes ordered, casualties or calamities or any cause beyond the Contractor's control, or by labor disputes in no wise caused by or resulting from default or collusion on the part of the Contractor, then the times fixed for completion of the work to the extent specified shall be extended for a period equivalent to the time lost by reason of any of the causes mentioned in this Section. No such allowances of time shall be made, however, unless notice in writing or a claim is presented to MATA before the last day of each calendar month for all delays occurring within said calendar month, and the Contractor shall satisfy MATA that the delays claimed were unavoidable, caused substantial cessation of work under the contract and could not have been reasonably anticipated or adequately guarded against.

53. Warranties

The Contractor shall warrant that the equipment furnished under this contract is free from error and defects in material and workmanship for twelve months from date of installation and acceptance by MATA, and will work under normal use and service according to these specifications. Any equipment that fails to meet this warranty shall be promptly corrected or replaced at the Contractor's sole cost and expense.

When warranty repairs are required, MATA and the Contractor's representative shall agree within five days after notification on the most appropriate course for the repairs and the exact scope of the repairs to be performed under the warranty. If no agreement is obtained within the five day period, MATA reserves the right to commence the repairs and deduct the cost

from any remaining amounts due the Contractor, or, if the final payment on the Contract has been made, bill the Contractor for the costs, including any court costs.

54. **Pricing** - The price to be quoted in any Bid submitted shall include all labor, materials, tools, equipment, and other costs necessary to fully complete the project in accordance with the specifications. Anything omitted from such specifications which is clearly necessary for the completion of the item and its appurtenances shall be considered a portion of such Bid item although not directly specified or called for in these specifications. All material shall be new and in no case will used, reconditioned, or obsolete material be accepted unless otherwise specified. Bidder should note discounts, if any. Freight charges must be included in Bid price.
55. **Terms of Payment** - Payment for the specified items shall be net thirty (30) days after acceptance of an approved invoice.
56. **Acceptance of Material** - If the item is not acceptable; MATA will furnish a letter of non-acceptance detailing the deficiencies within thirty (30) days after delivery. Acceptance of delivery of an item shall not release the CONTRACTOR from liability for faulty workmanship or materials appearing even after final payment has been made.
57. **Contract Subletting** - No Contract may be assigned, sublet, or transferred without the written consent of MATA.
58. **References** - Bidder shall provide with his Bid at least five (5) references for projects similar to that described in this Invitation for Bid. The following must be provided: company name, address and telephone number, fax number, a contact person, and the dates of the contract. The references given should be on contracts within a twelve (12) month period prior to the Bid due date.
59. **Federal Changes** - The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA Master Agreement) between MATA and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.
60. **Recycled Products** - The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. **No Government Obligation**
 - a. MATA and the CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to MATA, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
 - b. The CONTRACTOR agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
61. **Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by

DOT, as set forth in FTA Master Agreement (10), dated October 1, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any MATA requests, which would cause MATA to be in violation of the FTA terms and conditions.

62. Disputes, Breaches, Defaults or Other Litigation - Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the CONTRACTOR. The Contracting Officer may consult with the Construction Manager if one has been appointed for this project. The decision of the Contracting Officer shall be final and conclusive unless, within ten (10) days from the receipt of such copy, the CONTRACTOR mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Chief Executive Officer of MATA. The Chief Executive Officer shall review the dispute, related documents and the Contracting Officer's Final Decision. The Chief Executive Officer may consult with the Construction Manager and the Contracting Officer. The decision of the Chief Executive Officer shall be final and conclusive unless, within 10 days from the date of the receipt of such copy, the CONTRACTOR mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Board of the Memphis Area Transit Authority. The decision of the Board or its duly authorized representative for the determination of such appeals shall be final and conclusive unless in proceedings initiated by either party for review of such decision in a court of competent jurisdiction, the Court determines the decision to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence. In connection with any appeal proceeding under this Article, the CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the CONTRACTOR shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision.

This Section 63 does not preclude consideration of questions of law in connection with decisions provided for in Paragraph a. above. Nothing in this Contract, however, shall be construed as making final the decisions of the Board or its representative on a question of law.

63. Prompt Payment. The prime CONTRACTOR agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime CONTRACTOR receives from MATA. The prime CONTRACTOR agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MATA. This clause applies to both DBE and non-DBE subcontractors. If the prime CONTRACTOR determines the work to be unsatisfactory, it must notify MATA's Contracting Officer, Project Director and DBE Liaison Officer immediately, in writing, and state the reasons. Failure to comply with this requirement will be construed to be a breach of contract and subject to contract termination. At MATA's request, the Contractor shall supply copies of said payments.

64. National Intelligent Transportation Systems Architecture and Standards - To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

65. Veterans Employment - Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give 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 former employee.

END OF SECTION 00700