



REQUEST FOR PROPOSAL

SUBJECT: Transit Advertising Sales Production, Installation, and Removal


DATE: January 26, 2023

PROPOSAL NO.: 23-12

PROPOSAL DUE: February 27, 2023 **TIME:** 11:00 A.M. C.S.T.

The Memphis Area Transit Authority invites proposals for supplies and/or services 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,

Frances Boyland
Contract Administrator

COMMON PROBLEMS WITH RFP SUBMITTAL

- Missing or unsigned copies of certain forms and certifications. The following must be included in the RFP:
 - Addenda Acknowledgement Form
 - Affidavit of Non-Collusion (Exhibit I)
 - Buy America (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 Contractor or Subcontractor
 - Schedule of DBE Participation
 - Explanation of "No Response"

- Incomplete or outdated information on client references and/or sufficient number of references provided.

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

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

- Failure to properly label the RFP package with RFP label.

- RFP received late. All RFPs must be in MATA's possession by the deadline shown in the RFP. All RFPs received after the deadline will be returned unopened.

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EXHIBIT II BUY AMERICA CERTIFICATE

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

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

EXHIBIT IV CERTIFICATION OF RESTRICTIONS ON LOBBYING

**CERTIFICATION OF UTILIZATION OF DISADVANTAGED BUSINESS
ENTERPRISES**

**LETTER OF INTENT TO PERFORM AS A DBE CONTRACTOR OR
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SCHEDULE OF DBE PARTICIPATION

NO RESPONSE

PROPOSAL FORM

SECTION D UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES

ATTACHMENT GENERAL CONTRACT PROVISIONS 1

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 11:00 a.m. local time, on February 27, 2023**, for furnishing the following:

TRANSIT ADVERTISING SALES PRODUCTION, INSTALLATION AND REMOVAL

Proposers must submit their proposal with the enclosed label attached to the envelope.

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 Frances Boyland, Contract Administrator at (901) 722-7199 or via email: fboyland@matatransit.com or Shelia Maclin, Manager of Purchasing, (901) 722-7102 or via email: smaclin@matatransit.com.

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

MATA reserves the right to reject any and all proposals, and to waive any informality in proposing.

January 26, 2023, February 16, 17, 2023

Gary Rosenfeld
Chief Executive Officer

SECTION A

INSTRUCTION TO PROPOSERS

SECTION A

INSTRUCTIONS TO PROPOSERS

1.0 GENERAL

1.1 The Memphis Area Transit Authority (hereinafter referred to as MATA) seeks Proposals for professional services from qualified vendors capable of providing the scope of services described in Section B. These instructions provide detailed legal and technical requirements for the acquisition of this product. This Request for Proposals (RFP) will become part of the contract.

MATA will enter a contract with the successful proposer for professional services relative to the Project. This Project is more particularly described in Section B – Scope of Services. General Contract Provisions are included in Attachment 1. Where there are conflicts between the General Contract 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” means MATA. The words “request for proposal”, “RFP”, and “solicitation” are synonymous. The words “proposal”, “bid” and “offer” are also synonymous and it is understood that once MATA accepts same, the document will constitute a portion of the contract contemplated by these instructions. The words “proposer”, “bidder” and “offeror” are also synonymous.

1.3 This Request for Proposals (RFP) does not commit MATA to award a contract or 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, until 11:00 AM, local time on February 27, 2023.** The deadline is an estimation and should be used as a working guide for planning purposes. MATA reserves the right to adjust this deadline as required during the course of the RFP process. MATA will make a good faith effort to notify potential proposers of adjustments to the schedule; however, ultimate responsibility for obtaining notice of changes lies with the Proposer. Any changes to the proposed schedule will be listed on our website, www.matatransit.com.

Release Date of RFP	January 26, 2023
Addenda Request	N/A
Pre-Proposal Meeting	N/A
Deadline for all questions to RFP	February 8, 2023
Proposals Due	February 27, 2023
Evaluations of Proposals	March 6 - 8, 2023
Contract Approval	March 28, 2023
Contract Award/Notice Proceed	March 30, 2023
Notice of Non-Select	March 29, 2023

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 RFP and assume all risk of late delivery, miss-delivery and non-delivery. Any proposal received at the MATA locations designated for this solicitation after the time specified for receipt of proposals will not be considered and will be returned to the proposer unopened.

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

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

MATA's normal business hours are 8:00 a.m. to 4:30 p.m. Monday through Friday. After normal business hours, Proposals will be accepted at the MATA dispatcher's office, 1370 Levee Road, Memphis, TN 38108; however, Proposers are reminded of their sole responsibility for ensuring that their RFP is deposited in the Purchasing Department.

Proposers may verify receipt of RFPs by contacting Frances Boyland at (901) 722-7199 or email: fboyland@matatransit.com.

Proposer must submit a current W-9 form with proposal.

No PRE-PROPOSAL conference will be held.

1.5 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.

1.6 **A Performance Bond is required for this project.**

1.7 MATA reserves the right to reject any or all proposals, to waive formalities, and to select the proposal and the Company that, in MATA's sole discretion, is the best interest of MATA.

- MATA also reserves the right to:
 - Disqualify any proposal or proposer in accordance with Instructions to Proposer or Proposal Format or Format Requirements.
 - Amend, modify, or withdraw this RFP.
 - Remedy errors in the RFP.
 - Revise any requirements under the RFP.
 - Appoint an evaluation committee to review proposals.
 - Seek assistance of outside technical experts to review proposals.
 - Approve or disapprove any subconsultants and/or suppliers.
 - Establish a short list of proposers eligible for discussions after review of written proposals.
 - Solicit best and final offers from all or some of the proposers.
 - Require supplement statements of information from any responding party.
 - Extend deadlines for submission of responses hereto (allowing already submitted proposals an opportunity for review).
 - Negotiate or hold discussion with any or all proposers to correct insufficient responses that do not completely comply or conform to the instructions contained herein.
 - Wave any nonconformity with this RFP.
 - Cancel, in whole or in part, this RFP if MATA deems it is in the best interest to do so.
 - Request additional information or clarification of information provided in the response without changing the terms of the RFP.
 - Accept other than the lowest priced proposal.
 - Award the contract to multiple proposers.
 - Waive any portion of the selection process in order to accelerate the selection and negotiation with the top-ranked management company.

- MATA may exercise the forgoing rights at any time without notice and without liability to any proposer, or any other party, for expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of bidder. Issuance of this RFP does not bind MATA to award a contract.
- Nothing stated at any time by any representative of MATA, will effect a change in, or constitute an addition to, this RFP unless confirmed in writing by MATA.
- Respondents hereto must agree to keep confidential their response and any information received from MATA.
- All information submitted in response to the RFP shall become the property of MATA, and as such, may be subject to public review as public records unless information is deemed proprietary work product or copyrighted.
- Respondents acknowledge and agree that MATA will not be liable for any costs, expenses, losses, damages (including damages for loss of anticipated profit), or liabilities incurred by the respondent or any member thereof as a result of, or arising out of, submitting a proposal, negotiating changes to such proposal, or due to MATA acceptance or non-acceptance of the proposal.
- MATA shall provide the release of all public information concerning the project, including selection announcements and contract awards. Those desiring to release information to the public must receive prior written approval from an authorized representative of MATA.
- Neither MATA nor any of its officers, agents, consultants, or employees shall be responsible for the accuracy of any information provided as part of the RFP (including appendices). All respondents are encouraged to independently verify the accuracy of any information provided. The use of this information in the preparation of a response to the RFP is at the sole risk of the respondent.
- The respondent shall not collude in any manner or engage in any practices with any other respondent(s), which may restrict or eliminate competition or otherwise restrain trade. Violation of this instruction will cause MATA to reject the respondent's submittal. This prohibition is not intended to preclude joint ventures or subcontracts.
- All responses submitted must be the original work product of the respondent. The copying, paraphrasing, or other use of substantial portions of the work product of another respondent is not permitted. Failure to adhere to this instruction will cause MATA to reject the response. The successful respondent will be required to enter into contract by signature on separate contract documents, which will be prepared by MATA from information in the RFP and the successful respondent's proposal.

2.0 PROPOSAL REQUIREMENTS

- 2.1 Proposals must concisely set forth full, accurate, and complete information required by this proposal including any attachments.
- 2.2 The Proposer shall provide all the work described in Section B - Scope of Work.
- 2.3 The Proposer shall provide signed copies of required forms and certifications. Required forms and certifications are included in Section C.
- 2.4 An original and **six (6) copies** of the Proposals 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 Proposals shall initial such erasures and changes. Electronic or facsimile Proposals will not be considered.
- In preparing the proposal, please double-side print all sections to reduce paper consumption and use recycled products, where feasible.
 - Proposals shall be prepared on 8.5 x 11" paper with 1" margins. Typing shall be single spaced and no smaller than font size 11.
 - The use of 11x17 fold out sheets for large tables, charts, or diagrams is permitted, but

should be limited to four (4) pages.

- No promotional or advertising information is permitted. Do not include this information anywhere within your proposals.
- All copies should be unbound and in an envelope with all documentation included. The use of a binder clip is permitted.
 - 'Original' should be marked and sealed.
 - 'Copies' should be marked and sealed.

2.5 Modifications of Proposals already submitted will be considered if received at the office designated in Proposals by the time set for receipt of Proposals.

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 PROPOSAL FORMAT REQUIREMENTS

The order of the proposal should be as such (with tabs and page numbers):

A. TECHNICAL PROPOSAL

- Proposal Letter
- Personnel Qualifications and Related Experience
- Methodology and Technical Approach
- Management Plan and Schedule
- Professional Services Contract
- Response to Section B – Scope of Work

All Proposers must provide the following information:

Proposal Letter (1 page)

This letter must be completed and executed by an authorized representative of the Proposer. No other letter may replace or be included in addition to the Proposal Letter.

A proposal letter transmitting the proposal must be submitted and dated. The letter must indicate that the Proposer agrees to be bound by the proposal without modifications, unless mutually agreed to by MATA and the Proposer.

The proposal letter shall also contain the name, title, address, e-mail address, and telephone number(s) of an individual(s) with authority to bind the Proposer during the period in which MATA is evaluating proposals. The cover letter shall also identify the legal form of the firm. If the firm is a corporation, or limited liability company, the cover letter shall identify in which state(s) the company was incorporated and has its principal office/place of business. If a consortium, joint venture or team approach is being proposed, provide the above information for all participating firms.

The cover letter shall be signed by a principal of the firm or other person fully authorized to act on behalf of the firm or team.

Personnel Qualifications and Related Experience (8-10 pages)

The proposal shall include a general description of the firm and each team member and its background as it relates to this project. Specific information regarding the firm and each team member and their respective staff should include the qualifications and experience of the proposer for the comparable requested services. At a minimum provide the following:

- Information regarding the firm's team member's previous experience with similar or related projects. It should contain a brief description of these projects and project staffing. The experience should include the capacity of the provider to undertake this contract with maximum financial return to MATA.
- Information demonstrating the firm and team member and their respective staff capabilities to perform all aspects of this Project based on the Scope of Work found in Section B of the RFP.
 - Sales experience and qualifications should include the proposer's experience with transit or transit related clients.
 - Financial capacity to handle projects before initial payment.
- A summary of the relevant experience and proposed roles should be provided for key personnel.
- Information regarding the expertise and experience of staff person(s) to be assigned to work on the project. It should also contain specific proposed responsibilities of the project staff person(s), coordination activities with MATA staff and estimated number of workdays of participation.
- Information on the current and projected workload of key staff to be assigned to this project; including level and magnitude of involvement and start and completion dates.
- Provide a list of recent projects completed by the firm and by each team member. Must be within the past five (5) years. References including client name, address, contact person, telephone number, email, project start and end date as well as a project description.
 - References should be for similar or related projects that proposed key staff members for this project have worked.
- If any work is to be subcontracted to another firm(s), the proposal must include the above firm and staff qualification information for each subcontractor, a description of the services the firm performs as well as related projects and references.
- A description of the resources of the firm/team must be included in the Proposals. At a minimum, this information will consist of number of personnel, by discipline, for (1) the firm/team as a whole and (2) the principal office from which this work will be conducted. Specialized equipment, facilities, or other assets that would be useful in completing the requested services should also be described. A MATA Professional Services Qualifications Questionnaire Form can be submitted to fulfill the requirements regarding personnel strength.
 - Location and adequacy of office; number of key personnel assigned to sell and manage MATA's advertising inventory.

Methodology and Technical Approach (5-7 pages)

Description of the firm's proposed approach to the sales of transit advertising to include but not limited to the following:

- Full understanding of the RFP Scope of Work as demonstrated by the approach, methodology, human, and material resources included in a Proposed Work Plan.
- The creativity and strategic soundness of the Proposed Work Plan.
- Creative ideas proposed to maximize additional advertising revenues, advertising space use, and additional outlets/channels that MATA can explore for future revenue.
- Ability to become familiar with and gain experience concerning past performance surrounding MATA's previous solicitors.
- Ability to prove and provide the required services.
- The Service Delivery Plan for MATA that has a reasonable timeframe.

Management Plan and Schedule (8-10 pages)

The Management Plan should demonstrate how the firm will manage their responsibilities, schedule the work to be performed and work with MATA personnel. Address the following for the Management Plan and Schedule and how this will be achieved:

- Starting with the goal: What customers do you want to attract to use transit advertising? What kind of increase in customer traffic is the firm looking for and in what time?

- Dedicated Resources: Describe the personnel resources and market development focus that will be given to transit advertising. Does your company also buy/sell other out of home advertising options like billboards etc.? Does your company have staff that buy/sell out of home advertising for other ad agencies? If so, how will this impact your company's ability to effectively promote bus transit advertising for MATA?
- Defining the audience: Who does the company consider as the target demographic? Is the company catering to affluent adults or those individuals who seek money "beneath couch cushions"?
- Determining what products or services will be featured: Will the company seek out new products, businesses, or opportunities to feature? Or will the company offer to search out existing companies and revamp pricing and feature ads?
- Completing a SWOT Analysis: What are the core competencies the company sees as the strength of their agency? What does the company do well that places them at an advantage? What are the other competitors doing that might hinder your business with developing transit advertising?
- Building an advertising plan: What types of advertising are you going to develop? When do you see the advertising up and running? Where do you see the strongest areas to start the transit advertising? Will you develop potential future radio/TV ad campaigns for transit advertising to create an opportunity for potential sales?
- Developing or use low-cost methods: What social media ideas can be used to generate transit advertising dollars? Create a list of other low-cost advertising plan for transit advertising that may work within 180 days of the contract.
- Launching an advertising campaign: How will you maintain consistency? How will you develop transit advertising to include a campaign for using transit advertising?
- Analyzing the results: How will you determine if the advertising strategy met its goals? When determining which goals failed and which succeeded, how will you develop continuous improvement plans and put them into action? How will you measure success and failure?

Professional Services Contract Statement (1-2 pages)

As for the *Contract Provisions*: Indicate willingness to accept the terms and conditions in the Contract Provisions or list those to which exception is taken, and, as appropriate, provide proposed alternate wording. It is not MATA's intent to make substantial changes to the outlined Contract Provisions. Additional information provided in Section B – Scope of Work.

As for the *Terms of the Contract*: MATA desires to negotiate a three (3) year period contract with two (2) options Exercisable solely by MATA for one-year each All revenue/cost must be provided separately with the Financial Proposal. It should be noted that multiyear contracts may continue each year only after funding appropriations and program approval have been granted by MATA Board of Commissioners. If necessary, MATA reserves the right to cancel the contract after the three-year period without notice.

MATA reserves the right to add similar or like items as needed and to increase quantities as needed throughout the contract term. Prior to each one-year option. MATA will review the proposed revenue/cost with the selected contractor for any changes in proposed revenue for the renewal optional years to be adjusted as mutually agreed upon between MATA and the contractor.

As for the *Type of Contract*: MATA intends to award fixed revenue in conjunction with a price re-determination contract for advertising and related services. The fixed price will be based upon the Guaranteed Minimum Payment and the price re-determination will be based upon proceeds paid to MATA over and above the Guaranteed Minimum Payment based upon the Revenue Share Percentage. If a contract is awarded, all revenue generated funds are to remain firm for a period of three years from the date of award and for each optional renewal year.

Response to Section B – Scope of Work (10-15 pages)

The Contractor understands that MATA or any representatives for MATA will be responsible for any information obtained or used in assessing the response and that the response is used for informational purposes in determining the best qualified contractor. As a Contractor you are responsible for independently verifying the accuracy of any information you provide in your bid. The use of this information is for preparational purposes for the response to the RFP and is at the risk of the respondent. MATA encourages the Contractor to review Section B in its entirety and respond to each section of the Scope of Work as to how the Contractor will address each request.

Required Forms and Certifications

The following signed forms and certifications shall be provided:

- Exhibit I - Affidavit of Non-Collusion
- Exhibit II - Buy America Certificate
- Exhibit III - Certification of Primary Participant/Certification of Lower-Tier Participant Regarding Debarments, Suspension, and Other Responsibility Matters.
- Exhibit IV - Certification of Restrictions on Lobbying
- Addenda Acknowledgment
- Letter of Intent to Perform as a DBE Contractor or Subcontractor
- Certification of Utilization of Disadvantaged Business Enterprises
- Schedule of DBE Participation
- Explanation of "No Response"

FYI: Proposers must provide References According to General Contract Provisions, Section 26 as a part of the *Personal Qualifications and Related Experience* of the proposal.

Blank Forms are provided in Sections C of this PROPOSAL.

FINANCIAL PROPOSAL – To Be Provided In A Separately Sealed Envelope

Financial Proposal and Reporting (5-8 pages)

FINANCIAL PROPOSALS ARE NOT CONSIDERED IN THE EVALUATION PROCESS THEY ARE USED FOR NEGOTIATION PURPOSES ONLY

Proposers include a *revenue sharing plan* that details an annual revenue guarantee which would be paid to MATA during each contract year (hereinafter referred to as a "Minimum Guaranteed Payment") and a proposed percentage of net revenues due to MATA once the Minimum Guaranteed Payment has been exceeded (hereinafter referred to as a "Revenue Share"). The breakdown is as follows:

- The percentage split of gross revenues between MATA and the Contractor and the minimum annual revenue guaranteed.
- The best financial interest of MATA.
- Proof of meeting compensation guarantees in most recent contracts with other agencies and the percentage split of gross revenues.
 - REVENUE SHARE: The amount of revenue generated for advertising sales is of great importance to MATA. The proposer must pay MATA a percentage split of gross revenues and a minimum annual dollar guarantee payable in twelve (12) equal installments. The payment to MATA for the percentage gross revenues or the minimum annual dollar guarantee payments will be paid by the 10th of each following month.
- Except for MATA advertisement, no other production costs may be included or deducted from the Monthly Revenue Remittance Report: The report must include:
 - Advertiser's Name

- Point-of-contact
- Contract Period
- Advertising property type
- Quantity sold per property
- Unit price per property type
- Total monthly sales per advertiser
- MATA Revenue Remittance Amount for all advertisers
- Total monthly MATA Revenue Remittance Amount for all advertisers
- System-wide count of advertising property inventory sold and unsold by property type
- Advertisers are solely responsible for production cost.

FYI: The Contractor is responsible for creating a contract with a potential vendor, When doing so, MATA may require that any price quotes submitted include all necessary cost to complete the services in accordance with the specifications. Anything omitted from such specifications, which are clearly necessary, shall be considered a portion of such cost although not directly specified or called for in the specifications will not impact MATA's allocated or agreed upon amount. Proposer should note discounts, rebates, etc. that directly or indirectly impact the price quoted.

4.0 CHANGES TO THE SPECIFICATIONS

- 4.1 MATA will not engage in oral interpretations to any firm as to the meaning of specifications or any other questions, comments, or concerns pertaining to the terms and conditions or scope of work of this RFP unless timely sent in writing (mail, email, or fax) to the Contract Administrator for this RFP. Any changes to the Request for Proposals will be made in written Addendum by MATA and will be forwarded to all persons and firms to who documents have been transmitted.

Responses to questions may be handled as an Addendum if the response would provide clarification to requirements of the RFP or contents of Proposals. All such addenda shall become part of the contract documents. MATA will not be responsible for any other explanation or interpretation of the proposed proposal made or given prior to the award of the contract. No member of MATA staff will be able to respond to questions received after the specified time frame. If no written request for clarification or question is timely submitted by the proposer, all conditions and requirements contained within are accepted and understood by the Proposer.

- 4.2 **Requests for Clarification or approved equal concerns must be submitted in writing to Frances Boyland, MATA, 1330 Levee Road, Memphis, TN 38108 and must be received no later than 11:00 a.m. local time, February 8, 2023**, in accordance with the Approved Equals procedures described in the General Contract Provisions. 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 emailed to fboyland@matatransit.com.**

- 4.3 Addendum to RFP: If it becomes necessary to revise the RFP, any addendums will be posted on the MATA website, sent to persons or firms to whom MATA has transmitted the RFP, and to those having expressed an interest in submitting a proposal.

5.0 PROPOSAL EVALUATION

- 5.1 MATA will appoint an evaluation committee to evaluate Proposals and recommend the top ranked proposer. The committee will apply those evaluation criteria set forth in the Request for Proposals or in Addenda issued by MATA. An evaluation criterion is deemed to include any unstated "sub criterion" that logically might be included within the scope of the stated criterion.

Evaluation Factor Categories	Subcategories	Points
Experience and Qualifications of Proposer	Experience and ability of firm to undertake contract responsibilities, Results of background checks, reference checks, and interviews with the selected proposers, demonstrated successful and recent relative experience in comparable markets within past 5 years, Description of resources to include establishment of local presence	20
Experience and Qualifications of Staff Assigned to Project	Sales experience and qualifications of personnel assigned to the project to include transit related experience, location, and adequacy of office; number and experience of key personnel assigned to sell and manage agency advertising inventory, Leadership personnel accountable for the project to include role, experience, and ability to represent MATA. .	20
Methodology and Technical Approach	Proposed Work Plan – Demonstrated understanding of RFP, Creative and strategic soundness of service delivery plan, Creative ideas proposed to maximize additional advertising revenues, advertising space use, and additional outlets that MATA can explore for future returns.	20
Management Plan and Schedule	Proposers results oriented and timebound plan that includes proposed products and services to be marketed to target audiences in the MATA service area, Understanding of Local Market, Launch Timeframe.	15
Scope of Work	Proposer understanding of scope of work and advertising standards, special advertising options, PSA development, Potential for advertising partnerships with community private and private non-profit organizations, Development of various bus wrap template and design, Printing - facilities & shelters (Potential), Production and design services, Installation and removal of advertising, Alternative advertising options to include audio/visual advertising in terminals and in or on buses.	15
TOTAL POINTS		100

- 5.2 The evaluation committee will likely request interviews with the short-listed firms. These interviewees are scored on their interview and presentation by the evaluation committee and not on its Financial Proposal. These interviews will be held online with short-listed firms will be held before the separately sealed financial proposals are opened.
- 5.3 MATA reserves the right to enter into negotiations with the top ranked proposer without requesting interviews.
- 5.4 Proposals will be evaluated based on the following factors in the following order of priority:
- 5.5 ***Price shall not be considered during the evaluation of Technical Proposals.*** After conclusion of the evaluation of the Technical Proposals, the Financial Proposal submitted by the top-ranked Proposal will be opened. MATA will enter price negotiations with that proposer. If a fair and reasonable price cannot be agreed upon, then negotiations with the top ranked proposer shall be terminated. The Financial Proposal of the second ranked proposer is then opened, and the process is repeated until a mutually agreeable contract is negotiated.

- 5.6 Negotiations will be in conformance with applicable federal, state, 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 not be limited to:
- a. An overview of the accounting system and its capability to track project costs.
 - b. Charts 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 of 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.)

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 evaluation criteria and results of negotiation.
- 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.
- 6.3 A written notice of award or Acceptance of Offer, mailed or otherwise furnished the Successful Proposer within the time specified in the PROPOSALS, shall be deemed to result in a binding contract.
- 6.4 Qualifications for Award of this Contract shall be made to the proposal which is responsive to all aspects to the procurement requirements, and to where MATA has determined that the proposer can confirm and declare:
- The proposer has the capacity to do business within the State of Tennessee.
 - The proposer has the capability to assure completion of the required services within the time specified under the contract.
 - The proposer presently has the necessary facilities, financial resources, and licenses to complete the contract in a satisfactory manner and within the required time.
 - The proposer is of lawful age and that no other person, firm, or corporation has any interest in this proposal or the contract proposed to be entered into.
 - The proposer is not in arrears to the State of Tennessee, City of Memphis or MATA upon debt or contract and is not defaulting as surety or otherwise, upon any obligation to MATA.
 - No member, officer, or employee of MATA, Mid-South Transportation Management, Inc. and the City of Memphis during their tenure or for two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.
 - To be 'qualified' by MATA, the proposer must have the State and Local licenses as legally required that are necessary to perform and complete the work as called for herein.
 - The proposer is not on the disqualifying list of ineligible consultants per the Federal, State, and Local government.
 - The Proposer has the means by which to agree to commence work on this project immediately upon the signing of the contract by both parties and the issuance of the Notice to Proceed by MATA.
- 6.5 Partial Takeover of Contract. MATA may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by MATA shall not be deemed a breach of contract.

The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service MATA will assume and the date MATA will be assuming. MATA's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract.

MATA reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for MATA's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date MATA exercises its right to a Partial Takeover. MATA's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

7.0 PROTESTS

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 the General Contract Provisions.

8.0 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

8.1 GENERAL DBE INFORMATION

A. Memphis Area Transit Authority (MATA), a recipient of Federal financial assistance from the Federal Transit Administration, is committed to and has adopted a Disadvantaged Business Enterprise Policy in accordance with Federal Regulations (49 C.F.R. Part 26, as amended) issued by the U.S. Department of Transportation. It is the policy of MATA to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to its activities.

To this end, MATA has developed procedures to remove barriers to DBE participation in the proposing and award process and to assist DBE firms to develop and compete successfully outside of the DBE program. In connection with the performance of this contract, the Prime Contractor will cooperate with MATA in meeting these commitments and objectives.

Accordingly, the Prime Contractor and any subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Prime Contractors and subcontractors shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Prime Contractor and any subcontractors to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as MATA deems appropriate.

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 International Airport

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.

8.2 DBE GOAL

A. Annual Overall Goal for DBE Participation

An annual overall goal for DBE participation in Owner U.S. DOT-assisted contracts is established by MATA's DBE Officer and approved by MATA's Board of Commissioners on a fiscal year basis. These goals reflect the availability of ready, willing and able DBEs that would be expected to participate in Owner contracts absent effects of discrimination. The goals are calculated as a percentage of the total amount of U.S. DOT funds that the Owner expects to expend on contracting opportunities during the fiscal year.

B. DBE Goal Applicable to This Contract

MATA has established a specific DBE goal of 0 percent for this contract. However, DBE participation is encouraged either the capacity of the prime contractor or subcontractor. Proposers are required to document their activities in the solicitation and selection of subcontractors to ensure that this process is carried out in a nondiscriminatory manner.

8.3 DBE ELIGIBILITY AND PARTICIPATION

A. Evaluation of DBE Certification Status

MATA shall require that any DBEs listed by proposers for participation in the contract be certified, as eligible DBEs at the time of proposal submittal. The DBE Officer shall review the Proposer's DBE Participation Form to confirm each DBE firm's certification status.

B. Determination of Amount of DBE Participation

Only the work actually performed by a DBE with its own forces will be counted as DBE participation. A DBE may participate as a prime contractor, subcontractor, joint venture partner, or vendor or supplier of materials or services required by the contract.

A DBE's participation can only be counted if it performs a commercially useful function on the contract. A DBE performs a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the DBE is not responsible for at least 30% of the work with its own forces or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function. A DBE trucking company performs a commercially useful

function if it is responsible for the overall management and supervision of the transportation services involved and uses at least one truck that it owns, insures and operates with its own employees on the contract.

The Contractor shall count DBE participation according to the following guidelines and in accordance with 49 CFR § 26.55:

- i. DBE Prime Contractor – Count the entire dollar amount of the work performed or services provided by the DBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as DBE participation by the DBE Prime Contractor.
- ii. DBE Subcontractor – Count the entire amount of the work performed or services provided by the DBE's own forces, including the cost of materials and supplies obtained for the work, except for materials and supplies purchased or leased from the Prime Contractor, and reasonable fees and commissions charged for the services. Do not count any work subcontracted by the DBE Subcontractor to another firm as DBE Participation by said DBE subcontractor. If the work has been subcontracted to another DBE, it will be counted as DBE participation for that other DBE.
- iii. DBE Joint Venture Partner – Count the portion of the work that is performed solely by the DBE's forces or, if the work is not clearly delineated between the DBE and the joint venture partner, count the portion of the work equal to the DBE's percentage ownership interest in the joint venture.
- iv. DBE Manufacturer – Count 100% of the costs of materials and supplies obtained from a DBE manufacturer that operates or maintains a factory that produces the materials and supplies on the premises. This applies whether the DBE is a prime contractor or subcontractor.
- v. DBE Regular Dealer – Count 60% of the costs of materials and supplies obtained from a DBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business, except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place of business. This applies whether a DBE is a prime contractor or subcontractor.
- vi. Other DBEs – Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from a DBE that is not a manufacturer or regular dealer. Do not count the cost of materials and supplies.
- vii. DBE Trucking Company – Count the entire amount of the transportation services provided by a DBE trucking company that performs the work using trucks it owns, insures and operates with its own employees on the contract.

Count the entire amount of the transportation service provided by a DBE trucking company that performs the work using trucks it leases from another DBE, including an owner-operator, provided that it is responsible for the overall management and supervision of the service and that it uses at least one truck that it owns, insures and operates with its own employees on the contract.

Count the entire amount of fees and commissions charged for providing the management

and supervision of transportation services using trucks it leases from a non-DBE trucking company, including owner-operator, provided that it is responsible for the overall management and supervision of the service and that it uses at least one truck that it owns, insures and operates with its own employees on the contract.

SECTION B

SCOPE OF SERVICES

SECTION B SCOPE OF SERVICES

1. SCOPE AND INTENT

It is the intent of these Specifications to provide minimum acceptable criteria to cover the provision for customer service, the sale of advertising rental space and services for buses, trolleys, and paratransit vehicles. MATA seeks proposals from highly reputable and experienced firms for transit advertising services to market, sell, secure, and manage advertising contracts, and provide customer service for rental spaces on MATA's fleet of buses, and paratransit vans. The successful bidder will receive an inventory list of vehicle panels for advertising. This space listing will include dimensions for the various formats. Additionally, firms are encouraged to submit revenue generating solutions including, but not limited to, MATA buses and rail vehicles.

It is MATA's intention to continue to generate additional revenue through transit advertising and to maximize the advertising revenue paid to MATA, which will assist the agency to offset costs associated with the provision of public transit service. The offered services shall not deviate from these specifications, unless such changes are authorized by MATA.

MATA, through this Advertising Policy, intends to establish uniform, viewpoint-neutral standards for the display of advertising. In setting its advertising standards, the MATA seeks to fulfill the following goals and objectives:

- maximization of revenue generated by advertising.
- maximization of revenue generated by attracting, maintaining, and increasing ridership.
- maintaining the safe, secure and orderly operation of the MATA.
- maintaining a safe and welcoming environment for all MATA passengers, including minors who travel on or come in contact with MATA system and transit personnel:
- avoiding the identification of MATA with advertisements or the viewpoints of the non-MATA advertisers; and,
- providing advertising consistent with the MATA brand; and,
- expanding the creation of strategic partnerships with both business and non-profit partners.

MATA is seeking the best company to work towards meeting the revenue needs for the agency. One way to determine is to see how one company compares to other entities. MATA would like to see how an outside advertising company can 'partner' with MATA in achieving those advertising sales goals. One way is for those companies to provide MATA with strategic goals for the current Memphis market area. Tell us what you see that MATA does not see. Tell us what core competencies your company has that other companies do not bring to the table. Show where your strengths can create opportunities while eliminating any weaknesses or threats to the sales goals of MATA. Tell MATA what it will take to develop a strategic plan that includes transit advertising bus wraps, panels, potential and future on-board advertising. Show MATA what areas of the advertising market MATA is missing out on.

MATA reserves the right, from time to time, to suspend, modify or revoke the application of any or all these provisions as it deems necessary to comply with legal mandates, to accommodate its primary transportation function and to fulfill the goals and objectives referred to herein. All the provisions of this Advertising Policy shall be deemed severable.

MATA Operations and Promotions

MATA has the unqualified right to display, on or in its equipment and facilities, advertisements and notices that pertain to MATA operations and promotions.

Advertising Standards

MATA intends that its equipment and facilities constitute limited public forums that are subject to the viewpoint-neutral restrictions set forth below. Certain forms of paid and unpaid advertising will not be permitted for placement or display on or in MATA equipment and facilities.

MATA shall not display or maintain any advertisement that falls within one or more of the following categories.

- It shall be the policy of the MATA to prohibit all public-issue advertisements that tend to promote or inhibit the promotion of causes and beliefs; that in furtherance of this policy, all advertisements shall be limited to public announcements and advertising related to the advantage of a product, business or service.
- NO political or political campaign advertisements are allowed.
- NO tobacco advertisements, e-cigarettes and vaping products of any kind are allowed. Alcohol products are accepted with the provision that each sale of exterior advertising be sold as a package with an accompanying message regarding its proper use and warnings or notices required by federal and state law or regulations. MATA will allow advertising by casinos and the Tennessee Lottery.
- Up to 10% of advertising may be made available by the MATA, in its discretion, for Public Service Announcements (PSAs). PSAs are defined as an announcement or advertisement by a not-for-profit organization or government agency which explains a public service provided or announces an upcoming event which aids the community. It also includes an announcement or advertisement by a for-profit organization which explains a service provided for the benefit of the community or announces an upcoming event which aids the community.
- MATA reserves the right to disapprove or to remove any advertising that is false, misleading, deceptive, , or contrary to the best interests of the Transit Authority. All proposed advertisements and PSA's must be submitted in advance of initial publication or display to the MATA for approval. Such submission shall be in finalized form (with copy and images complete).

2. BACKGROUND

MATA – The Organization

The Memphis Area Transit Authority (MATA) is a public transportation system established pursuant to state and local law. MATA is governed by a Board of Commissioners who are appointed by the City of Memphis Mayor and confirmed by the City Council. Mid-South Transportation Management, Inc. (MTM), which manages and operates MATA's public transportation system, has total employment of about 525

Transit Services

MATA's operations cover the City of Memphis, and portions of the City of Bartlett and Lakeland (Paratransit Service), City of Germantown, and unincorporated Shelby County in Tennessee. A contract service is also operated in the City of West Memphis, Arkansas.

MATA provides fixed route bus and paratransit services throughout the service area, and rail trolley service in the downtown area. Annual ridership is about 11.5 million passengers.

The Fixed Route bus system operates about 7 million miles annually on 35 routes. Service is available 365 days per year. The span of service is 4:30 am to midnight on weekdays; 4:30 am to 10:30 pm on Saturdays; and 7:00 am to 7:30 pm on Sundays and five Holidays. There are 122 fixed route buses that operate in the peak period. MATA-Plus Paratransit service for individuals with disabilities operates in the same areas and the same times as Fixed Route service. Paratransit service runs about two million miles per year. There are 42 paratransit vehicles that operate in the peak period. The rail trolley system operates about 375,000 miles annually on three lines in the downtown area. The span of service is about the same as the Fixed Route system with slightly later

service on Saturday nights. There are ten trolleys that operate in the peak period.

Vehicles and Facilities

The bus revenue vehicle fleet currently consists of 146 fixed route buses (35-foot, 40-foot and 60-foot vehicles) and 67 paratransit buses (30-foot and 22-foot vehicles). MATA also maintains a fleet of 18 vintage rail trolley vehicles (generally 48-foot and 31-foot) and various types of support vehicles. Therefore, at present the total active fleet of revenue vehicles available for advertising is 231.

MATA owns property at 14 locations, totaling about 75 acres of land and about 350,000 square feet of buildings. The breakdown by type of infrastructure is as follows:

- Transit Centers/Passenger Terminals [4 locations; approximately 30 acres of land and 180,000 square feet of buildings]
- Operations/Maintenance/Administration/Storage [5 locations; approximately 30 acres of land and 200,000 square feet of buildings]
- Thirty-five (35) rail trolley stops/stations
- Park-and-ride [1 location; 1 acre]
- Right-of-way and vacant land [5 locations; approximately 23 acres of land]

3. CONTRACT

The previous contracts for Vehicle Advertising expired on June 30, 2021. The previous contract for Shelter Advertising expired on June 30, 2021. MATA has suspended the usage of shelters and digital formats advertising. MATA currently has no transferable vehicle advertising contracts.

The successful Proposer(s) will enter a contract that incorporates the scope of services, terms and conditions of this Request for Proposal including any changes that are made as a result of this procurement process and resulting negotiations. MATA reserves the right to award multiple contracts. In addition, the following clauses will be included in the contract:

MATA will require:

- The Contractor to indemnify, defend, and hold harmless MATA, Mid-South Transportation Management, Inc., RAPT-Dev USA, Inc., the City of Memphis, their respective Boards, officers, employees, and agents for any advertising copy that is deemed to be false, misleading, defamatory, an invasion of rights of privacy or publicity, copyright infringement, trademark infringement, or trade name infringement.
- The Contractor to take possession of any existing contracts that are transferrable with MATA's compensation for any outstanding to start at the beginning of the contract with proposer. The contractor will handle the existing contracts at the rates negotiated between the Contractor and MATA. It will become the contractor's responsibility to service, bill, and collect from these existing advertising contracts and remit the appropriate amounts to MATA.
- The successful Proposer(s) to comply with the insurance requirements set forth in the RFP.
- The Contractor shall provide a Certificate of Insurance upon acceptance of the contract.
- Contractor to conduct a reach and frequency report. The successful proposer will produce a report on the MATA inventory. The report will include bus wraps, panels, and potential poster advertising at trolley stations. MATA will need the report completed 60 days after execution of contract.

The successful Proposer will be responsible for:

- Marketing; selling; securing advertising contracts and providing customer service for the rental spaces on buses.
- Maintenance of a continuous sales effort within the Memphis area conducted by a professional staff of sufficient size to assure adequate service to all advertising clients and potential customers.
- Provision of all printing service on behalf of clients as may be agreed upon between the Proposer and individual clients.
- Assuring that all displays are tasteful and of a high-quality standard with regard to artwork, sign construction materials, and ad content displayed or shown.
- Obtaining all permissions, consents, license, and releases for advertising copy and materials.
- All materials and services provided under this Contract, whether those materials and services are provided by the Proposer, purchased ready-made, or provided by a sub-contractor.
- Warranting that all products and/or processes utilized in production, repair and removal of all exterior advertisements during the term of the Contract shall not damage the exterior finished surface of MATA property. In the event that damage occurs, the Proposer shall reimburse MATA for its costs of repairs, labor and materials.
- Promptly reporting use of any sub-contractors and work to be performed. Proposer will be responsible for all work and will be considered the prime contractor.

4. PRICES, TERMS, AND PAYMENT METHOD

Firm prices shall be proposed and must include all ancillary costs as well as the following:

- TAXES: MATA does not pay federal excise and sales taxes or state excise and use taxes on direct purchases.
- MISTAKES: Proposers are expected to examine the conditions, scope of work, proposal prices, extensions, specifications, and all instructions pertaining to the Request for Proposal (RFP). Failure to do so will be at the Proposer's risk.
- INVOICING AND PAYMENT: Changes rendered from the Contractor to MATA shall be due and payable on terms of Net 45 days after proper and complete billing is received to/from MATA.

MATA requires Proposers to provide (1) a minimum annual guarantee, plus (2) a percentage of revenue in addition to the guarantee based on one or more revenue targets. Payments shall be made monthly with an annual reconciliation. Payments are due on the 10th of each month of the following month of collections. MATA is not considering a media guarantee as a form of revenue, and Proposers are requested to not include a media guarantee. The commission is based solely on the sale of the advertising revenue and **NOT** on collections.

MATA assumes that "Gross Revenue" is defined as 100% of the revenue received or collected for or paid to MATA without the deduction of any payments for any charges, commissions, or fees. Outside sales are those sales made directly by the company (not MATA itself). The Gross sales amount for the ad(s) is the 'gross revenue' with deductions which would be the 'Net Revenue.' "Net Revenue" is defined as Gross Revenue minus standard advertising agency commission. The 'pass throughs' are those additional costs that are discussed during the negotiations by the company and MATA prior to the approval of the contract. The 'pass throughs' can include service fees, travel costs, per diems, or admin fees. Identifying the gross revenue is to ensure that there are no unapproved ad mark-ups/downs or price changes or discounts. This is to ensure that the pricing terms agreed upon are met. Any deviations from these definitions should be explained in the Proposal.

MATA expects that up to 10 % of advertising space will be made available to MATA at no charge for MATA's use.

MATA reserves the right to use, without charge, unsold advertising spaces available for self-promotional purposes during such time that space is available. This includes buses or other unutilized spaces. MATA will be responsible for the production costs and installation of any advertising signs and materials solely for MATA's use.

Monthly Revenue Remittance Report

Submitted advertising contracts between the successful Proposer and advertiser must include at a minimum:

1. Advertiser's Name, Complete Address, Contact Name, Number, and Email Address
2. Date of Agreement
3. Term of Agreement
4. Quantity and Type of Advertisement Ordered
5. Guaranteed Property Placement (if any)
6. Billing Amount to Advertiser Specifying Month/Year each Payment is Due
7. Total Contract Value
8. Signature of Authorized Representatives of Both Parties to the Agreement

Monthly Revenue Remittance Report must at a minimum include:

1. Advertiser's Name
2. Contract Period
3. Advertising Property Type
4. Quantity Sold per Property Type
5. Unit Price per Property Type
6. Total Monthly Sales per Advertiser
7. MTA Revenue Remittance Amount per Advertiser
8. Total Monthly MTA Revenue Remittance Amount for All Advertisers
9. System-wide Count of Advertising Property Inventory Sold and Unsold by Property Type

Additional reports may be added as required by MATA

The successful Proposer shall maintain all required records for three (3) years after final payment by the successful Proposer to MATA under the terms of the operating contract. However, if any audit, claim, or litigation is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

The successful Proposer will permit MATA to inspect/audit all records and financial data involved in the operation of the concession during the regular business hours maintained by the successful Proposer, and at such other times upon one (1) day's written notice.

The monthly payment and report are to be mailed to following:

**Bernhard Rudolph, CFO
MATA
1370 LEVEE ROAD
MEMPHIS, TN 38108**

With copies of reports emailed to:

Bernhard Rudolph, CFO, brudolph@matatransit.com
Patrina Chambers, Director of Grants and Procurement, pchambers@matatransit.com
Shelia Maclin, Purchasing Manager, smaclin@matatransit.com
Monica Brodie, Contracting Officer, mbrodie@matatransit.com
Frances Boyland, Sr. Contractor Administrator, fboyland@matatransit.com
Rob Stephens, Sr. Contractor Administrator, rstephens@matatransit.com

5. WARRANTY

Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge. Contractor represents and warrants that MATA is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract. Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry. If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then MATA shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of MATA's rights under this Section shall not prejudice MATA's rights to seek any other remedies available under this Contract or applicable law.

6. REQUIRED BONDS

To guarantee the faithful performance and execution of the contract and any extensions and future renewals to protect MATA if CONTRACTOR is in default as set forth in the RFP and any extensions and future renewals, and to secure the one-year guarantee and warranty of any sales, the CONTRACTOR shall provide MATA with a bond issued by an insurance company licensed to do business in the State of Tennessee in an amount which sum shall not be less than 100% of the estimated value of the contract. MATA may at its sole and absolute discretion, partially release a portion or portions of the security provided under this section of the RFP as the project(s) are approved by MATA, provided that the CONTRACTOR is not in default of any provision of the contract and the total remaining security is not less than **75%** of the estimated cost. All security provided under this section shall be released at the end of the contract period, or any extension thereof as provided in accordance with the contract.

Performance Bond: The Contractor shall provide to MATA a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Maximum Liability, MATA reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and, in the manner, and form prescribed by MATA at Attachment A. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations for the Term, as the Contract is extended or renewed. A performance bond will be required to be provided by the successful Proposer(s) for the Vehicle Advertising. The performance bond shall be for the full amount of the guarantee for the entire contract term and shall be submitted upon final signatures.

Failure to provide to MATA the performance bond(s) as required under this Contract may result in this Contract being terminated by MATA. The performance bond required under this Contract shall not be reduced during the Term without MATA's prior written approval.

Payment Bond: The Contractor shall provide to MATA a payment bond guaranteeing that the Contractor(s) will pay for advertisement obtained. The payment bond will be issued in the amount of twenty-five percent of the agreement amount for the contract. The bond should be submitted within ten days of the contract agreement to proceed date. Failure to provide a payment bond will forfeit the contract. Failure to maintain the bond will result in contract termination. The payment bond cannot be reduced during the term without written consent and approval from MATA Board.

Employee Dishonesty Bond. The successful Proposer shall supply to MATA and the City of Memphis, Tennessee a corporate surety bond issued by an insurance company licensed to do business in the state of Tennessee to protect MATA and the City of Memphis, Tennessee against dishonesty or fraudulent acts of employees of the successful Proposer in the amount of \$_____ [The successful proposer will be the cost of the bond into its financial proposal).

Additional Requirements: The surety for any surety bonds provided as Security shall have a current positive rating with the Federal Government and the State of Tennessee, shall be licensed to do business in Tennessee or can conduct business in the State of Tennessee and Shelby County, and shall be satisfactory to MATA. As part of the obligation secured by the Security and in addition to the face amount of the Security, Proposer, its contractor, or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by MATA in enforcing the obligations of this Contract. The Proposer, its subcontractors and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Advertising and Installation, or the plans and specifications for the Advertising and Installation shall in any way affect its obligation on the Security.

Evidence and Incorporation of Security: Evidence of the Security shall be provided during bidding process, unless other forms are deemed acceptable by the MATA, and when such forms are completed to the satisfaction of MATA, the forms and evidence of the Security shall be attached and for all purposes deemed incorporated into the Contract by reference.

7. TERM

The term of the contract(s) is three (3) years effective _____, 202__, provided however that MATA has two (2) separate options exercisable solely by MATA to extend the term of the Contract under the terms and conditions set forth therein for an additional Contract Year from _____, 202__ - _____, 202__ and a second additional Contract Year from _____, 202__ -- _____, 202__, respectively.

8. CONTRACT EXPIRATION/TERMINATION

Upon the expiration or termination of the advertising contract, the successful Proposer will assign and transfer to MATA all contracts for advertising. Said contracts will then become the property of MATA

9. SCOPE OF SERVICES

The traditional advertising methods that MATA has used are advertising on vehicles and advertising on shelters. The Contractor's right to provide advertising is limited to vehicles and expressly excludes advertisements located on bus route shelters. The Scope of Services for the vehicle advertising is described below. MATA will not allow tobacco advertising of any type. MATA will allow advertising by casinos and the Tennessee Lottery. MATA is also encouraging Proposers to

suggest other methods that could be used to generate advertising revenue. Proposers can propose on any or all the three categories of service described in this section.

Vehicle Advertising

MATA currently has several full-size buses that have been completely covered in a vinyl screen advertising material (i.e., "wrapped"). These buses are generally on long term agreements of six (6) months to one (1) year. Any short-term agreements must be negotiated at an increased rate; the Proposer shall state in its Proposal how the markup will occur to include timing and scheduling. The Contractor may sell more advertising using this method and is encouraged to do so due to the high revenue return. Wrapping of vintage rail trolleys may be possible but has not been done previously. MATA expects that when the vinyl screen advertising material is removed that the bus or trolley paint shall be restored to the same condition as prior to when the advertising material was applied.

The buses are stored and maintained at MATA's Operations and Maintenance Facility at 1370 Levee Road, Memphis, TN. Installation and servicing work for buses may be performed by the Contractor at this location. MATA has a sign storage and work room that is part of the Operations & Maintenance Facility. The room is approximately 30' x 30', has two locking doors (one accesses the bus service facility and the other leads outdoors) and is equipped with power and plumbing facilities. It is used to store and prepare bus advertisement signs.

The vintage rail trolley vehicles are stored and maintained at 547 North Main Street, Memphis, TN. Space is available at this location for sign storage.

Proposers should address their plan for storage and, if MATA space is used, assign a cost/value for the use of the space including rent and utilities.

The Contractor will be required to perform complete advertising and sales functions including but not limited to:

- Establishing and maintaining a continuous presence within the urbanized area providing for adequate staff to assure an on-going sales effort and adequate service to all clients.
- Providing all printing/painting services on behalf of clients as may be agreed upon between the Contractor and individual clients.
- Providing adequate personnel to install and maintain and remove signs in a timely and professional manner. Contractor activities taking place at MATA's facilities must be limited to times that MATA vehicles are available without interfering with MATA's operational needs and maintenance.
- Assuring that advertising of a tasteful and high-quality standard regarding artwork, sign construction material, and ad content will be shown. All exterior signs shall be constructed with material capable of withstanding all weather conditions and exposure to daily high pressure bus washing without deterioration of the sign backing and artwork. All proofs require MATA authorization/approval before placing on MATA property. An appointed MATA representative will be assigned by CEO.
- Obtaining all permissions, consents, license and releases for advertising copy and materials.
- Providing and acknowledge full liability and responsibility for all claims for damages resulting out of the services performed by the Contractor.
- Providing to MATA the right to use any unsold exterior or interior space for self-promotional purposes during such time that the space is available. MATA will reserve two interior spaces on all vehicles, and the Contractor shall install and remove signs in these two spaces at no charge.
- Providing monthly sales reports to MATA's Project Manager. The report should consist of amount of advertising sold and collected, production costs, and installation cost. These

amounts should be gross amounts. Any net amounts should accompany a description of variance of cost. The report should also include new contracts and ending contracts by stating the number of clients by display area type and the current rates charged to advertisers for each display space type.

- Not holding MATA responsible for the Contractor's property, tools, equipment, signs, frames, etc. kept on MATA property. All such items shall be the sole responsibility of the Contractor and may be left on MATA property at the Contractor's risk but not so that they hinder MATA's operations.

Bus Fixed Route Fleet

MATA's fixed route bus fleet carries both interior and exterior advertising space. The following is a listing of MATA's current fixed route bus fleet:

Year	Make/Model	Vehicle Numbers	Length	Qty
2003	Gillig Diesel	R401 thru R418	40'	11
2010	Gillig Diesel	R424 thru R447	40'	17
2014	Gillig Diesel	R448 thru R458	40'	10
2010	Gillig Hybrid	R4002	40'	1
2014	Gillig Hybrid	R4019 thru R4033	40'	15
2015	Gillig Diesel	R460 thru R462	40'	3
2017	Gillig Diesel	R21701 thru R21715	40'	15
2018	Gillig Diesel	R21801 thru R21809	40'	9
2012	Gillig Diesel	R4004 thru R4018	40'	15
2010	Gillig Diesel	R5002 thru R5005	35'	3
2012	Gillig Diesel (Antelope Valley Buses – NIS)	R21201 thru R21215	40'	15
2015	Gillig Diesel (Antelope Valley Buses – NIS)	R21501 thru R21503	40'	3
2010	Gillig Hybrid	P2006	29'	1
2015	Hometown Trolley Villager (gas)	R601 thru R607		7

MATA reserves the right to add buses and remove buses from revenue service from time-to-time during the term of the contract for maintenance or other needs. When this occurs for an extended time, either additional signs will be placed on buses or contract of advertisers will be extended. This applies to the fixed route and paratransit fleet.

Paratransit Fleet

Paratransit fleet is the door-to-door paratransit transportation services for people with disabilities

and those unable to ride the fixed route bus service. The operating hours and days of service mirror the service of our fixed route buses.

Year	Make/Model	Vehicle Numbers	Length	Qty
2009	Gillig Diesel	P3001 thru P3009	29'	5
2010	Gillig Diesel	P3013 thru P3022	29'	5
2016	Dodge Grand Caravan – Braun	P11601 thru P11610	16'	9
2017	Braun Van	P11701 thru P11708	16'	7
2018	Braun Van	P11801	16'	1
2018	Ford Transit 350 Wagon (gas)	P11802	22'	1
2019	Ford Mobility Trans 350 Wagon (Diesel)	P11901 thru P11920	22'	20
2020	Ford Mobility Trans U4X (gas)	P12001 thru P12021	22'	21
2016	Champion E450 Cutaway (gas)	P233 thru P243	25'	7
2014	Braun Van (gas)	P210 thru P214	16'	2
2011	Ford E450 Van (gas)	P217	25'	1
2014	Ford 350 Challenger Van (gas)	P218, P227	23'	2
2010	Ford 350 Allstar Van (gas)	P226		1

Advertising Space Available on Fixed Route Buses

Locations	Size	Footage
Interior	11" (h) x 28" (w) 11" (h) x 42" (w)	All space above the windows is available; space behind the operator is not available.
Exterior	30" (h) x 144" (w) 30" (h) x 20" (w)	Curbside, streetside, front, and rear; can be directly applied. <i>(All except 22-foot vehicles.)</i>
Exterior	21" (h) x 36" (w) 21" (h) x 72" (w)	Front framed only. Rear framed only. <i>(All except 22-foot vehicles.)</i>
Exterior	22" (h) x 94" (w) 38" (h) x 56" (w)	Curbside, streetside, and rear. Rear <i>(22-foot vehicles.)</i>

All fixed route buses are equipped with bike racks. Exterior bus signs shall be flexible, non-permanent removable, self-adhesive vinyl, FLEXcon, BUSmark, or 3M Scotchal Changeable Film – 3555 or 3470. Non-Permanent adhesive vinyl type materials must be used to ensure no damage to paint on MATA fleet when removed.

Materials must be capable of withstanding weather conditions. Vehicle signage shall be constructed

to withstand exposure to daily high pressure washing without deterioration of the sign backing and artwork. Contractor will be responsible for the cost to remove and replace any vehicle signage, or full wrapped bus graphics that may be damaged by daily exposure to weather conditions and/or a high-pressure vehicle washer.

Contractor shall fully reimburse MATA upon demand for all expenses incurred in the repair of damage to the finish of any bus, paratransit vehicle or trolley caused directly or indirectly by the installation or removal of exterior or interior advertising.

MATA takes pride in the appearance of its buses and other assets and will insist that damaged or worn signs be replaced.

Interior bus posters should be 11" (h) x 28" (w) printed on 6 ply coated cardboard stock or .020 mil styrene preferred. MATA will allow a 3/4 boarder. Any changes in size or location of displays interior or exterior are subject to MATA approval.

Wrapped Buses and Superside Posters

Full vehicle wraps and Superside posters will be available subject to the following conditions:

- Destination sign glass and front doors to remain clear, any graphics on the passenger windows to be transparent from the inside looking out.
- Wrap is limited to covering no more than 50% of windows per side
- Wrapping of the curb-side window immediately next to the front door is prohibited
- There is no limit on the number of coaches that can be wrapped.
- No "layering" of vinyl advertisements is permitted.
- Presently no buses are wrapped but there is a contract for four to be wrapped and in service in June 2022.
- Bus numbers shall be displayed at four locations on a covered bus - front, rear and both sides.
- MATA's logos will not be disturbed.

As with all advertising, the contractor must submit the illustration or wrap design and advertiser for each bus, paratransit vehicle or trolley for prior approval by MATA. MATA reserves the right to reject any advertiser or design.

At the end of the display period, the Contractor will restore the bus, paratransit vehicle, or trolley to its standard exterior appearance. Upon removal of vinyl advertisement, contractor will be responsible for the cost of restoring the exterior surface of the bus covered by the vinyl advertisements to the condition of the surrounding exterior surface of the bus. The adhesive used to apply the vinyl type advertisement shall not cause damage to MATA vehicles, the paint scheme, existing decals or exterior surface.

The contractor will be notified of any such damage and MATA will not proceed with repair for forty-eight (48) hours after notification to the Contractor to allow the contractor time to inspect the damage. The contractor can waive inspection with proof obtained from photos and verified via emails. The contractor shall be required to reimburse MATA for the full dollar cost to repair any damage to our vehicles resulting from application or removal of the vinyl advertisement.

Ensure that the vehicle ID on each side of vehicle is visible. Our fully wrapped vehicles currently do not have a place for a MATA logo. Attached are examples of transit vehicles with the logos incorporated into the design. The logo can be integrated into the wrap at the top closest to the front passenger door, on the driver side window, on the lower portion of the wrap near the passenger side door, or near the rear passenger side window at the top. The wrap must incorporate the bus or van number on it as well. These numbers must be visible on the front below the windshield and rear of the bus. The number can also be incorporated on the driver side above the window (See

Attached)

Installation Requirements

From start to finish, the installation of a wrap can take anywhere from 30 to 45 days. This process involves graphic designers, printers, installation team, and maintenance.

Installation of wraps and panel advertising on buses will require the following:

- Verification of an existing contract to include timeframe for installation and removal.
- Verification that payment is received from CONTRACTOR for advertising.
 - Verification should include wrap model, approval of advertising, etc.
- A scheduled time for the vehicle to be prepped to include cleaning and servicing prior to installation.
- A scheduled location for installation of vehicle.
- Installation equipment must be provided by the company who will install the advertisement.

Vendor will need to provide all necessary equipment and staffing for the installation of wraps.

This process can be amended to provide additional details.

Advertising Space Available for Vintage Rail Trolley Panels

Location	Size	Footage
Interior	12"	All space above the windows is available. Length of the interior of the trolley.
Exterior	31" (h) x 145" (w)	Melbourne's – Curbside, Streetside, 2 spaces
Exterior	40" (h) x 12" (w)	Oporto's – Curbside, Streetside, 4 spaces

Digital Advertising Media Services

As needed, the successful Proposal shall provide digital advertising media buying services both in fixed route transit, paratransit, and MATA facilities. The proposal will need to address how to manage external digital software purchased by MATA for media advertising.

The digital advertising media services may include, but not limited to the following:

- ***Paid Search:*** Regular campaign management and optimization via bid management tools, campaign, ad group, and keyword creation; ad copy development; ongoing testing and optimization; set-up and maintenance of audience lists; landing page recommendations.
- ***Display (Prospecting, Retargeting, Native and Online Video/Audio):*** Media planning and buying, leveraging appropriate advertising networks and/or sites; ongoing optimization of campaigns, site exclusions, frequency caps, etc.; sequential messaging recommendations and implementation; regular management directly with vendors and/or through a demand side platform (DSP); pixel mapping.
- ***Mobile:*** Identifying standout media opportunities, maximizing conversions through best practices, identifying goals and potential advertising opportunities using virtual and digital advertising.
- ***Paid Social:*** Leveraging social media sites for acquisition purposes; actively managing and optimizing campaigns; ongoing testing; creation of messaging and recommended imagery.
- Advanced Digital TV.
- Other digital opportunities as they arise.

Account Management of the Digital Media (separate from bus and shelter advertising): MATA expects that the necessary personnel will be assigned to the project as the need arises. The expectation that an Account Lead will be responsible for the day-to-day management of all work associated with the account. The capability to assign additional staffing resources will be necessary

as the opportunities arise.

Vendor Capabilities as it Pertains to Digital Media: The Proposal should demonstrate and documents to MATA that the Proposer understands MATA's business strategy and can negotiate and execute agreed upon media plans that remain compliant with FTA, State of Tennessee, and Local statutes, ordinances and regulations. The Proposal should clearly indicate how the Proposer will drive quality inquiries while maintaining the integrity of the MATA brand; how the Proposer will provide comprehensive recommendations for each media tactic based on meeting the financial goals for advertising sales for MATA; and to provide a separate company-generated monthly reporting and comprehensive analysis on the performance and optimization efforts of the Digital Media sales.

The Proposal should indicate how the daily data on all sold media with MATA approved tracking protocols are transferred into a reporting system that should include significant granular details, isolating each individual media placement, price, and all relevant advertising campaign details as it pertains to the successfulness of the advertising relationship between MATA and the sold advertising. There is a required follow-up internal reporting, analysis and modeling concerning the impact of advertising on revenue. This data should indicate the most relevant and competitive trends and performance measures necessary for digital media data.

Advertising Content

- A. CONTRACTOR shall remove any advertising from the vehicle(s) or shelter(s) which MATA or its sole discretion, determine to be unsuitable for display. In the event such a determination is made, CONTRACTOR will remove all such advertising within twenty-four (24) hours after receipt of written notice from MATA requiring the removal of such advertising.

In addition to the foregoing, no advertising, signs or devices shall be permitted in conjunction with bus wraps:

1. Display the words "STOP", "DRIVE-IN", "DANGER", or any other word, phrase, symbol, or character which as determined by MATA may interfere with, mislead or direct vehicular traffic is prohibited.
 2. Is excessively illuminated for traffic safety reasons as determined by MATA.
 3. No tobacco advertisements are allowed. MATA we will not accept reservations or requests for such advertisement.
 4. Donated space for Public Service Announcements is limited to interior bus signs only. Public Service Announcements are defined as: An announcement or advertisement by a not-for-profit organization or governmental agency which explains a public service provided or announces an upcoming event which aids the community. It also includes an announcement or advertisement by a for-profit organization which explains a service provided for the benefit of the community or announces an upcoming event which aids the community. Copy must be submitted to the MATA for approval.
 5. MATA reserves the right to disapprove or remove any advertising that is false, misleading, and deceptive.
- B. The CONTRACTOR shall promptly notify the Authority of all requests from any governmental agency or its representatives to remove advertising content. The CONTRACTOR, while solely responsible for daily operations including communication with the public, shall also inform the Authority of any complaints or demands from third parties which may reasonably be considered as being of interest or concern to the Authority.

Unsold Space

The CONTRACTOR is expected to allocate a percentage of the advertising space for MATA and other public service announcements. Please describe your offer in the proposal along with any conditions, such as fees for production and/or installation. MATA reserves the right to approve or disapprove of these materials. MATA reserves two (2) interior spaces per vehicle (bus, paratransit, trolley) for MATA's use.

Duty to Remove

- A. On termination or expiration of the Contract or in the event MATA fails to receive notice of renewal or replacement of any permit, bond or policy of insurance required by the Contract, within twenty (20) days of its expiration date or its cancellation, the CONTRACTOR shall remove all of its retrofitted advertising panels including related electrical wiring and restore the surface area so that it meets all of MATA's requirements for pedestrian passage. Removal shall commence promptly upon expiration or termination of the Contract, proceed in an orderly fashion so as not to unduly disrupt the needs of either the Authority's passengers who utilize the vehicles or the Authority, and shall be completed within six (6) months of such expiration or termination.
- B. This removal and restoration obligations shall be bonded as part of the performance bond provided by the CONTRACTOR.

Other Advertising

MATA is interested in exploring advertising opportunities in addition to revenue vehicles. Suggestions include, but are not limited to, advertising associated with:

- Electronic (scrolling) informational signs on the interior of buses and trolleys and on monitors at passenger terminals
- Signage at passenger terminals (interior and exterior)
- Billboards on MATA properties
- Printed transit materials (i.e., system map, route timetables, other informational materials)
- Website
- Naming rights (e.g., trolley stations)

Proposers are encouraged to present options for generating additional advertising revenue using these or other strategies.

10. TRADES

Trades will not be allowed at this time.

MATA will not attempt to acquire any new trades. MATA current trades (if any) will run through the trade-out expiration period.

11. ALTERNATE CONTRACTING ARRANGEMENTS

This RFP outlines a contracting arrangement that reflects a continuation of the existing arrangements. MATA is willing to consider proposals for different contracting arrangements that would improve the effectiveness and profitability of the transit advertising program for MATA and the CONTRACTOR.

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 proposing 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 request for proposal, designed to limit independent proposing 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 bids; 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 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.

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 Contractor or Subcontractor

To: _____
Name of Prime/General Proposer

23-12
MATA RFP Number

Address of Prime/General Proposer

City/State/Zip

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

Signature of Authorized DBE Representative

Certification # / State of Certification

Expiration Date of Certification

Address

Date

City/State/Zip

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# 23-12 for Transit Advertising Sales Production, Installation, and Removal** 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.**

**RFP #23-12
PROPOSAL FORM**

Transit Advertising Sales Production, Installation, and Removal

The undersigned understands that any condition stated above, clarification made to the above or information submitted on or with this form – other than that requested may render the proposal unresponsive.

NAME OF INDIVIDUAL/PARTNER/CORPORATION: _____

ADDRESS: _____

PHONE: _____ FAX _____

EMAIL: _____

BY: _____ TITLE: _____

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. Refer to Section A, 8.0 for DBE requirements.
- 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 promise 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 pursuant 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, Tuvalu, 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:
 1. The names, addresses, and telephone numbers of DBEs that were contacted and the date(s) of contract.
 2. A description of the information provided to the DBEs regarding the plans and specifications for portions of the work to be performed.
 3. 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 provides 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.
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

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 Subcontractor Payment Status Reports" 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 Subcontractor Payment Status 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.

9. Enforcement

- a. All Proposers are hereby advised that failure to carry out the requirements set forth above shall constitute a material breach of the contract, and after notification by MATA may result in rejection of the proposal or proposal; termination of the contract; a deduction from the contract funds due or to become due the contractor; or other such remedy as the MATA deems appropriate. Failure to comply with the DBE requirements shall include but not be limited to failure to meet the established goal, failure to submit documentation of good faith efforts; failure to exert a good faith effort (as determined by MATA) to meet any established DBE participation goal; failure to adhere to DBE substitution requirements; and failure to realize the DBE participation.
- b. If awarded the contract, the Proposer acknowledges and agrees that if MATA determines that the Proposer, a DBE or any other firm retained by the Proposer has failed to comply with the DBE Program requirements or federal or state DBE Program regulations, MATA, through its Contracting Officer, shall have the sole authority and discretion to determine the extent of the monetary value to which the DBE contract goals have not been met, and to assess against and withhold monetary damages from the contractor in the full amount of that breach. MATA may impose any other remedies available at law or provided in the contract in the event of a contract breach. The Proposer further understands and agrees that this clause authorizes MATA, through MATA's Contracting Officer, to determine and fix the extent of the damages caused by a breach of any contractual or regulatory DBE Program requirement and that the damage assessment will be enforced in addition to, and not in lieu of, any other

damages or remedy provisions in the contract. By entering into a contract, the Proposer irrevocably agrees to such an assessment of damages for DBE Program purposes and authorizes MATA to make such an assessment of damages against the Proposer and to collect that assessment from any sums due the Proposer under the contract, or any other contract, or by other legal process. The Proposer makes this certification, agreement and authorization on behalf of itself, its subcontractors and suppliers, and the proposal bond and contract bond sureties.

- c. The decision of the Contracting Officer shall be final and conclusive unless, within ten (10) days from the receipt, in writing, of such decision, the Proposer mails or otherwise furnishes to the Contracting Officer an appeal, in writing, addressed to the Chief Executive Officer of MATA. The Chief Executive Officer shall review the dispute, related documents and the Contracting Officer's decision. The Chief Executive Officer may consult with MATA's project manager, the Contracting Officer or any other person deemed necessary by the Chief Executive 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 decision, in writing, the Proposer mails or otherwise furnishes to the Contracting Officer an appeal, in writing, 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 appeal 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 section, the Proposer shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Proposer shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

ATTACHMENT 1

GENERAL CONTRACT PROVISIONS

**MEMPHIS AREA TRANSIT AUTHORITY (MATA)
GENERAL CONTRACT PROVISIONS**

1. Non-Collusion - The Proposer guarantees that the Proposal submitted is not a product of collusion with any other Proposer and no effort has been made to fix the Proposal price of any Proposer or to fix any overhead, profit, or cost element of any Proposal price. An Affidavit of Non-Collusion, as per attached format, must be signed and submitted with Proposal. (Exhibit I)
2. Proposal Acceptance - Each Proposal will be submitted with the understanding that the acceptance, in writing by purchaser of the offer to furnish any or all of the items described herein, shall constitute a Contract between the Proposer and the purchaser, which shall bind the Proposer on his part to furnish and deliver at his Proposal price and in accordance with said accepted Proposal and specifications.
3. Pricing - The price to be quoted in any Proposal 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 are clearly necessary for the completion of the item and its appurtenances shall be considered a portion of such Proposal 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. Proposer should note discounts, if any. Freight charges must be included in Proposal price.
4. Terms of Payment - Payment for the specified items shall be net thirty (30) days after acceptance. Proposer should note any discounts for payment before thirty (30) days.
5. 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 have been made.
6. Approved Equal -
 - a. In all cases, materials must be furnished as specified. Where brand names or specific items are used in the specifications, consider the term "or approved equal" to follow.
 - b. Any unapproved deviations, exceptions, substitutions, alternates, or conditional qualifications contained in a Proposal may be cause for its rejection.
 - c. If a potential Proposer feels that his product is an equal to the product specified, he must submit a written request to MATA.
 - d. Requests for approved equals, clarification of specifications, and protest of specifications must be received by MATA, **IN WRITING, NO LATER THAN 11:00 A.M. CST, February 8, 2023, 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 e-mailed to Frances Boyland, Senior Contract Administrator, at fboyland@matatransit.com.
 - e. MATA's replies to requests under paragraph (d) above will be post-marked at least fourteen (14) days before the date scheduled for Proposal opening.

- f. A notice of approved equals shall be furnished to all parties receiving specifications so that all Proposers may prepare their Proposal accordingly.
- g. Appeal from the decisions of MATA to approve or disapprove approved equal status shall be submitted in writing to the Contracting Officer, MATA, 1370 Levee Road, Memphis, TN 38108, not later than five (5) 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 Contracting Officer may request additional information from the appealing party, and information or a response from the Proposers which shall likewise be submitted in writing to the Contracting Officer not later than ten (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 Proposers; 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 Contracting 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 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.
- h. Changes in the specifications will be made by written addendum by MATA and will be forwarded to all persons and firms to whom Proposal documents have been furnished.

7. Proposal Withdrawal -

- a. Each and every Proposer who submits his Proposal specifically waives any right to withdraw it except as hereinafter provided. Proposers will be given permission to withdraw any Proposal after it has been deposited with MATA, provided any Proposer makes its request by telephone, telegraph, or in writing, twenty-four (24) hours before the time Proposals are due. Requests pertaining to withdrawals by telephone or telegraph must be confirmed in writing by the Proposer and must reach the Office of the Contracting Officer of MATA not later than one (1) hour prior to the time fixed for submission of Proposals.
- b. No Proposer may withdraw his Proposal within ninety (90) days after the date Proposals are due.

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

9. Tax Exemption - MATA is exempt from payment of all Federal, State, and local taxes in connection with the project. Said taxes must not be included in Proposal prices. MATA will provide necessary tax exemption certificate to manufacturer, if requested. This provision does not relieve the Consultant from the responsibility to pay all applicable taxes for goods, services, and labor acquired in the performance of the project.

10. Proposal Evaluation -

- a. Consideration will be given to Proposer's previous experience, price, financial responsibility of Proposer, responsiveness to these specifications, including level of participation of DBEs.
- b. Proposers 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 Proposals singularly or collectively on any of the Proposal items.
- d. The Contract shall be awarded according to Section 5.0 of Section A.

11. Proposal Cost Form - If MATA includes a Proposal Cost Form in the RFP, Proposals must be submitted on the form provided. Each item should be listed separately on the form. Proposals submitted in any other form may be considered non-responsive and may be rejected. Proposals may be submitted on any or all items in this Proposal request. Proposal Cost Form should be submitted in a separate package, one (1) original plus eight (8) copies and one (1) flash drive.

12. Protest Procedures - Protests may be made by prospective Proposers 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 protestors.
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. Proposal protests alleging restrictive specifications or improprieties which are apparent prior to Proposal closing time or receipt of Proposals must be submitted in writing to the Contracting Officer and must be received seven (7) days prior to Proposal closing time or receipt of Proposals. If the written protest is not received by the time specified, Proposals 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 Proposers, which shall likewise be submitted in writing to the Contracting Officer not later than ten (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 Proposers; 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 ten (10) days from the date of the informal hearing.

- b. Proposal 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 (7) 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 Proposers. 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 Proposers whose Proposals might become eligible for award shall be requested before expiration of the time for acceptance, to extend or withdraw the Proposal.

Where a written protest against the making of an award is received in the time specified, award will not be made prior to seven (7) 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 (7) 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 (7) 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 (7) 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 Proposers, which shall likewise be

submitted in writing to the Chief Executive Officer not later than ten (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 Proposers; 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 ten (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 (5) 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 (5) 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.
13. Correspondence - The Proposer is required to show on all correspondence with MATA and FTA, the following: RFP No. **23-12** Communication with MATA should be mailed directly to Frances Boyland, Contract Administrator, MATA, 1370 Levee Road, Memphis, TN 38108, or by e-mail to fboyland@matatransit.com.

14. Contract Subletting - No Contract may be assigned, sublet, or transferred without the written consent of MATA.

15. 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.

16. Extent of Agreement -

- a. The Proposal submitted by the CONTRACTOR is incorporated herein by reference as fully set forth verbatim herein. In the event of conflict between this Contract and Proposal, the provisions of this Contract shall control.
- b. This Contract, except as set forth in the preceding paragraph, represents the entire and integrated Agreement between MATA and the CONTRACTOR, and supersedes all prior negotiations, statements, instructions, and representations or agreements, whether written or oral. This Contract may not be modified, amended, or assigned except by written agreement duly signed by both parties.
- c. 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.

17. Compliance with Applicable Law -

- a. In the performance of its obligations pursuant to this Contract, the CONTRACTOR shall comply with all applicable provisions of Federal, State, and local law in any manner affecting 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.

- b. To accommodate changing Federal requirements, the CONTRACTOR agrees that Federal requirements may change, and the changed requirements will apply to the project as required, unless the Federal Government determines otherwise. All standards or limits within FTA's Master Agreement are minimum requirements, unless modified by FTA.
- c. The CONTRACTOR agrees to comply with FTA Circular 4220.1F, "Third Party Contracting Requirements", any revisions or replacement thereof, and applicable Federal regulations or requirements, including FTA third party contracting regulations when promulgated.

18. Audit and Inspection -

- a. The CONTRACTOR shall permit MATA, the Secretary, and Comptroller General of the United States or any of their duly authorized representatives' access to all CONTRACTOR records as they request for audits and inspections related to any Contract not awarded on the basis of competitive bidding for a capital or improvement project, as needed for compliance with 49 U.S.C. § 5325(a). The CONTRACTOR shall permit said persons to inspect all work materials, payrolls, and other data with regard to the project, and to audit the books, records, and accounts pertaining to such Contracts with regard to the project. The CONTRACTOR shall provide sufficient access to contract records as needed for compliance with federal regulations or to assure proper project management as determined by FTA.
- b. 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.
- c. In the event any Federal or State agency audits MATA, the CONTRACTOR shall provide whatever records, information, and assistance as MATA may reasonably require.
- d. The CONTRACTOR shall provide information and assistance requested by MATA for progress reports required of MATA by Federal or State Government, or agencies.

19. Equal Employment Opportunity - In the performance of its duties hereunder, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of disability, race, color, age, creed, sex, religion or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their disability, race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR shall insert the foregoing provisions (modified only to show the particular contractual relationship) in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

20. 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.

21. 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.
22. 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.
23. 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.

24. 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).
25. 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 Proposer 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 Proposal item whether the vendor manufactures the same or purchased ready-made from a source outside the vendor's company.
26. References - Proposer shall provide with its proposal at least three references for projects similar to that described in this Request for Proposal. 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 12-month period prior to the Proposal due date.
27. Delivery - Proposals shall provide for delivery of all equipment or supplies to MATA, 1370 Levee Road, Memphis, TN 38108, unless stated otherwise in Sections A or B.
28. Delivery Schedule - Hours of delivery shall be any weekday between 8:30 a.m. and 4:00 p.m., unless stated otherwise in Sections A or B.
29. Preference for United States Products and Services. To the extent applicable, the CONTRACTOR agrees to comply with the following U.S. preference requirements:
- a. Buy America (Applicable to Contracts Exceeding \$150,000) - 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 Proposal or the Proposal 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.
- b. Cargo Preference—Use of United States-Flag Vessels. The CONTRACTOR agrees to comply with U.S. Maritime Administration regulations, "Cargo Preference—U.S.-Flag Vessels," 46 C.F.R. Part 381, to the extent those regulations apply to the Project. Specifically, the CONTRACTOR agrees:

1. To utilize privately owned United States-Flag Commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates to United States-Flag Commercial vessels.
 2. To furnish within thirty (30) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, On-Board Commercial Ocean Bill-Of-Lading in English for each shipment of cargo described in paragraph one above to MATA (through the prime CONTRACTOR in the case of subcontractor Bills-of-Lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, DC 20590, marked with appropriate identification of the project.
- c. Fly America. The CONTRACTOR understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301.131 through 301.143.
30. Debarment, Suspension, and Other Responsibility 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 a federally covered transaction, either as 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.
- A certification process has been established by 49 CFR, Part 29 as a means to ensure that debarred, suspended, or voluntarily excluded persons do not participate in a federally assisted project. Each CONTRACTOR and subcontractor must provide to MATA a signed certification in compliance with 49 CFR, Part 29 as part of this Contract. (Exhibit III)
31. Prohibited Interests - No member, officer, or employee of MATA, MTM, First Transit, Inc., 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.
32. Copeland "Anti-Kickback" Act, as amended (Applicable to Construction Contracts) - 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.
33. 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.
34. 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.
 35. 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.
 36. 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.
 37. Indemnification - The CONTRACTOR shall indemnify, save, defend, and hold MATA, the City of Memphis, TN, First Transit, Inc. and MTM, 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.
 38. 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 Proposal 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 Proposal 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 Proposal will be treated as a negotiated procurement and MATA reserves the right to negotiate with the single Proposer to achieve a fair and reasonable price. If both parties cannot agree upon a negotiated price, MATA reserves the right to reject the single

Proposal.

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

39. 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.
40. 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, 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.
41. Excluded Facilities - The CONTRACTOR shall comply with the provisions of 40 CFR Part 15 which prohibit the use of facilities included on the Environmental Protection Agency list of violating facilities.
42. 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 FTA Master Agreement dated October 1, 2012, 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.
43. Lobbying Requirements (Applicable to Contracts Exceeding \$100,000) - 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.

- 44. 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.
- 45. 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.
- 46. 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 (17), dated October 1, 2010, 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.
- 47. 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.

48. Disputes, Breaches, Defaults or Other Litigation (Applicable to Contracts Exceeding \$100,000)

- a. 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.
- b. This Section 48 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.

49. Nondiscrimination - Title VI of the Civil Rights Act - 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.
50. 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.
51. Prompt Payment - The CONTRACTOR agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from receipt of each payment the prime contractor receives from MATA. The CONTRACTOR agrees further to return retainage payments to each subcontractor within 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 CONTRACTOR determines the work to be unsatisfactory, it must notify MATA's Contracting Officer, Project Manager 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.
52. Nondiscrimination in Federal Public Transportation Programs - The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
53. Contract Work Hours and Safety Standards Act - The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for non-construction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing 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.

54. 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.
55. Seismic Safety (Applicable to Design and/or Construction Contracts Only) - 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.
56. 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.
57. 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.