

**Request for Quotation 629873**

Title **Shelby Park Area 3 Construction**  
 Preview Date **26-AUG-2014 12:24:09** Open Date **26-AUG-2014 12:24:09**  
 Close Date **23-SEP-2014 15:00:00** Award Date **Not Specified**  
 Time Zone **Central Time**

*Please submit your response to:*

Company **Metro Govt Of Nashville and Davidson County**  
 Buyer **PITTMAN, GENARIO**  
 Location **Metro Govt Of Nashville and Davidson County**  
 Phone **Not Specified**  
 Fax  
 Email **Genario.Pittman@nashville.gov**

*When submitting your response, please include the following information.*

Your Company Name	<b>Insituform Technologies, LLC</b>
Address	
Contact Details	
Response Valid Until	

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**Exhibit #3**

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**1 Header Information****1.1 General Information**

Title	<b>Shelby Park Area 3 Construction</b>		
Description	<b>Shelby Park Area 3 Construction</b>		
Preview Date	<b>26-AUG-2014 12:24:09</b>	Open Date	<b>26-AUG-2014 12:24:09</b>
Close Date	<b>23-SEP-2014 15:00:00</b>	Award Date	<b>Not Specified</b>
Time Zone	<b>Central Time</b>	Buyer	<b>PITTMAN, GENARIO</b>
Quote Style	<b>Sealed</b>	Email	<b>Genario.Pittman@nashville.gov</b>
Outcome	<b>Contract Purchase Agreement</b>		

**1.2 Terms**

Effective Start Date	<b>Not Specified</b>	Effective End Date	<b>Not Specified</b>
Ship-To Address	<b>1 METRO SITE LOCATION   1590 1 METRO SITE LOCATION   1590 REFERENCE ADDR IN SOLICITATION United States</b>	Bill-To Address	<b>BILL TO: METRO PAYMENT SERVICES BILL TO: METRO PAYMENT SERVICES PO BOX 196301 NASHVILLE, TN 372196301 United States</b>
Payment Terms	<b>Net 30</b>	Carrier	
FOB	<b>Delivery</b>	Freight Terms	<b>Supplier Prepaid</b>
Currency	<b>USD (US Dollar)</b>	Price Precision	<b>Any</b>
Total Agreement Amount (USD)	<b>Not Specified</b>		

**1.3 Requirements**

<b>Solicitation Method</b>
<p><b>Invitation to Bid</b></p> <p>Pursuant to § 4.12.030 M.C.L., this solicitation document serves as the written determination of the Purchasing Agent, that this solicitation is an invitation to bid. Awards, if made, shall be to the lowest, responsive and responsible, evaluated offeror.</p> <p>There may be one or more amendments to this solicitation. Solicitation amendments are included as updates to the original solicitation. It is the offeror's responsibility to remain informed on all solicitation amendments and submit the solicitation response incorporating all amendments.</p> <p>Any alterations to the document(s) provided by the Metropolitan Government of Nashville and Davidson County (Metro) and submitted by the offeror other than completing questions, worksheets, or forms may result in your response being deemed nonresponsive, cancellation of any subsequent award, or any other legal remedies available to Metro.</p> <p>Offers to Metro online solicitations are required to be submitted within the iSupplier online environment unless otherwise stated. Hard copy offers <b>will not</b> be considered except as required by law.</p> <p>Any response to this solicitation is a <b>formal waiver of any claims of confidentiality</b> regardless of what may be stated, printed, or implied in the submission and/or attachments submitted. All information is made a <b>Public Record</b> after an award is made.</p> <p>The only official position of Metro is found within this solicitation document including answers provided in response to questions raised. The online discussion tool within iSupplier is the appropriate tool for all questions or communications concerning this solicitation.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<b>Solicitation Objective</b>
<p>The objective of this solicitation is to enter into a contract for a capital project.</p> <p>.....</p>

<b>Solicitation Objective</b>
Target Value .
Type <b>No Response Required</b>
<b>Solicitation Scope</b>
Scope Summary
The Metropolitan Government of Nashville and Davidson County (Metro) and Metro Water Services (MWS) seek a qualified Contractor for the provision of labor, tools, materials and construction products (including permits) necessary to complete this project. This project shall include improvements to abate sewer overflows in accordance with a federal Consent Decree and various planning reports developed for Metro Water Services. (OAP)
.....
Target Value .
Type <b>No Response Required</b>
Scope Detail
Details for this construction project consist of the following:
The rehabilitation of sanitary sewer systems by furnishing and installing Cured-in-Place Pipe Lining of existing 8-inch through 15-inch diameter sewer segments with service replacements by excavation, trenchless service renewals, cementitious and epoxy manhole rehabs, manhole casting replacements and adjustments. Associated excavation, erosion control, wastewater bypass pumping, cleaning, backfill, surface restoration of paved and non-paved areas including all testing and CCTV information as well as all appurtenances and other work as required by the Contract Drawings and Specifications.
<b>BACKGROUND INFORMATION</b>
<ul style="list-style-type: none"> <li>· This is a project of the Clean Water Nashville Overflow Abatement Program (CWNOAP) for sewer system improvements to abate sewer overflows in accordance with a federal Consent Decree and various planning reports developed for Metro Water Services.</li> <li>· The CWNOAP is managed by a Program Management Team that includes a Construction Management Consultant to oversee the Work.</li> <li>· This project is one of a series of rehabilitation, conveyance, and pumping and storage projects scheduled to be constructed during the next decade. For additional information, view the website, <a href="http://www.cleanwaternashville.org">http://www.cleanwaternashville.org</a>.</li> <li>· This project is for system maintenance and utilizes existing easements and rights-of-way. No specific permits for are required for bidding. The Contractor shall obtain the required permits for actual construction.</li> <li>· This project continues a series of rehabilitation projects in this sewer basin, the 1st and 2nd of which are adjacent to this project and under construction.</li> </ul>
.....
Target Value .
Type <b>No Response Required</b>
<b>SPECIAL NOTIFICATION</b>
Bidders shall note that Substitute Ordinance No. BL2013-380 amending Chapter 13.20 of the Metropolitan Code passed on April 4, 2013, and requires that the Contractor provide a written notice to residents whenever excavation work impacts their property. Bidders shall review the referenced Ordinance. All CWNOAP Contracts require strict adherence to this Ordinance as a condition of the Work.
*See attached Specifications for more detail.**
.....
Target Value .
Type <b>No Response Required</b>
Bid Form
Please complete the attached Bid Form and attach it to your submitted quote. The total bid amount should be entered as your quote price on the Lines Tab of the solicitation.
.....
Target Value <b>Have you attached your Bid Form?</b>
.....
Provide your answer below

<b>Solicitation Scope</b>
<p>As indicated in the Inquiries Section below, all questions that are specific to the solicitation shall be submitted via iSupplier Online Discussion on or before Thursday, September 18, 2014 @3:00 PM CDT. Questions will be answered formally via Amendment to the solicitation shortly after the deadline for submitting questions.</p> <p>You may contact Genario Pittman at 615-880-2641 or genario.pittman@nashville.gov with questions regarding iSupplier or you may email iSupplier@nashville.gov . All offerors are encouraged to sign in to the iSupplier system as soon as possible to view the solicitation and ensure all login information is correct. Finally, please have your offer loaded in the iSupplier system well in advance of the deadline for submission of offers to avoid any last minute functionality issues. While Metro makes every attempt to assist suppliers with entering their offers, there is not sufficient time to trouble shoot functionality issues within one hour of the deadline for submission of offers.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<b>Construction Clauses</b>
<p><b>LICENSING REQUIREMENTS</b></p> <p>Offeror must comply with all of the provisions of the <b>Contractors Licensing Act</b> of 1976 of the State of Tennessee, the same being set out in Tennessee Code Annotated, 62-6-101 et seq., and Section 62-6-119 as amended by 1997 Tennessee Public Act No. 153. Said Act and amendments are incorporated herein by reference. The prime contractor is required to be licensed whenever the total project is \$25,000 or more. In addition, contractors and subcontractor's performing the mechanical, plumbing, HVAC, electrical (including geothermal heating and cooling), and roofing must be licensed when their total portion is \$25,000 or more; with the exception of masonry subcontractors, and they are not required to supply license information until the total portion is \$100,000 (total cost includes materials and labor). Offeror must comply with all specific licensure requirements of the Tennessee Department of Environment and Conservations (TDEC).</p> <p>Failure to include the required licensure information will result in an offer being deemed nonresponsive. Acceptable State of Tennessee license classification(s) for the project include those identified below.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p> <p>If your firm is not licensed at the full classification level listed above, indicate your sub-classification license designation. The procuring Metro Department will make the determination if this sub-classification is appropriate for the solicitation. If they deem the sub-classification not appropriate for the solicitation, the offer will be deemed nonresponsive.</p> <p>.....</p> <p>Target Value .</p> <p>.....</p> <p>Provide your answer below</p>
<p>MU - Municipal and Utility Construction</p> <p>.....</p>

<b>Construction Clauses</b>
Target Value . <b>Type No Response Required</b>
Enter your Tennessee Contractor's License Classification(s) and any Sub-Classification(s). ..... Target Value . ..... Provide your answer below
Enter your Tennessee Contractor's License ID Number. ..... Target Value . ..... Provide your answer below
Enter your Tennessee Contractor's License Expiration Date. ..... Target Value . ..... Provide your answer below
Enter your Tennessee Contractor's License Monetary Limit. ..... Target Value . ..... Provide your answer below
Enter required licensing information for all subcontractors including name, classification(s), number, expiration date, and monetary limit. ..... Target Value . ..... Provide your answer below

<b>Construction Clauses</b>
<p><b>Stormwater Management</b></p> <p>All activities performed in under this solicitation and resulting contract/PO shall be conducted in full compliance with Metro Code of Law §§ 15.64 et al (Stormwater Management) including §§ 15.64.205 (<a href="http://www.nashville.gov/Water-Services/Pollution-Prevention/Illicit-Discharge-Ordinance.aspx">http://www.nashville.gov/Water-Services/Pollution-Prevention/Illicit-Discharge-Ordinance.aspx</a>).</p> <p>This requirement pertains to Unlawful/Prohibited Discharges to the Metro Storm Sewer System/Community Waters. It prohibits the discharge of "wastewater" and "non-stormwater" discharges such as wash water, process wastewater, etc. into the Municipal Storm Sewer System (MS4) or into Community Waters. Any questions relating these provisions should be routed to the Metro Water Services NPDES Office at (615) 880-2420. This requirement shall apply to all Metro construction projects in the service area, including areas outside Davidson County.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p>Contractor shall bear responsibility for all of Contractor's actions that cause MWS to violate project regulatory permits or Federal, State or local environmental regulations. Such permits and regulations may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• U.S. Army Corps of Engineers 404 Permits</li> <li>• TDEC Aquatic Resource Alteration Permits</li> <li>• TDEC Construction General Permits</li> <li>• Any State or Federal permits/approvals related to Threatened and Endangered Species</li> <li>• Metro Individual NPDES permits</li> <li>• Metro Code §15.64.205 - Metro Illicit Discharge Ordinance</li> <li>• Metro Stormwater Management Manual</li> </ul> <p>Contractor's responsibility shall include, but not be limited to, payment of all fines, assessments and/or civil penalties incurred due to Contractor's work, actions, design or installation and payment for any mitigation measures required due to the violation and cleanup associated with any violation.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p><b>Bonds</b></p> <p>A Payment and Performance Bond is required for a contract award exceeding \$100,000. The awarded firm shall submit a Payment Bond and a Performance Bond as a condition precedent to a contract or purchase order. Documentation of bonds shall be in a format acceptable to Metro.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p><b>Liquidated Damages</b></p> <p>This construction project is subject to liquidated damages. Metro will suffer financial loss, in addition to any increased costs of completion of the project, if the project is not substantially complete within 330 calendar days and finally complete within 30 calendar days after substantial completion.</p> <p>Contractor and Contractor's Surety shall be liable for and shall pay for the loss of use. This payment is for liquidated damages and should not be considered a penalty. Contractor shall pay Metro \$1,500.00 dollars for each calendar day exceeding the substantial completion date. Contractor shall pay Metro \$1,000.00 dollars for each calendar day exceeding the final completion date.</p> <p>.....</p>

<b>Construction Clauses</b>
Target Value . Type <b>No Response Required</b>
<b>Sustainability</b>
It is the policy of Metro to finance, plan, design, construct, maintain, and decommission its facilities and buildings to be sustainable. .....
Target Value . Type <b>No Response Required</b>
<b>Standard Solicitation Requirements</b>
<b>Inquiries</b>
All inquiries must be made by <b>Thursday, September 18, 2014 @ 3:00p.m CDT</b> , using the online discussions feature of the system. Offerors must clearly understand that the only official answer or position of Metro will be the one stated in writing by Division of Procurement staff. .....
Target Value . Type <b>No Response Required</b>
<b>Pre-Offer Meeting</b>
<b>The pre-offeror meeting will be held on Tuesday, September 9, 2014 @ 11:00a.m CDT. The meeting location is the University Conference Room located at 730 Second Avenue South, Nashville, TN 37210.</b> Metro urges all prospective offerors to attend planned pre-offer meetings. .....
Target Value . Type <b>No Response Required</b>
<b>Accurate Information</b>
Failure to provide complete and accurate information in an offer to this solicitation may result in your offer being deemed nonresponsive. Metro may institute debarment proceedings against the offeror and/or terminate any contract or purchase order that has been awarded based on inaccurate information. .....
Target Value . Type <b>No Response Required</b>
<b>Extraneous Information</b>
Offers should be brief and concise. Information provided beyond the requirements described in this solicitation may be considered extraneous and as a result discarded. .....
Target Value . Type <b>No Response Required</b>
<b>Minor Irregularities</b>
Metro reserves the right to waive minor irregularities in offers, provided that such action is in the best interest of the Metro. Any such waiver shall not modify any remaining solicitation requirements or excuse the offeror from full compliance with the solicitation specifications and other contract requirements if the offeror is awarded a contract. .....
Target Value . Type <b>No Response Required</b>
<b>Ambiguity, Conflict or Other Errors in the Solicitation</b>
Offeror is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in this solicitation prior to submitting their offer, or it shall be waived. Claims of ambiguity after submission of

<p><b>Standard Solicitation Requirements</b></p> <p>the offer shall not serve as grounds for a protest.</p> <p>If an offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in the solicitation, they shall immediately request modification or clarification using the online discussion feature of iSupplier. Required modifications or clarifications will be issued by solicitation amendment.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p><b>Validity of Offers</b></p> <p>All offers shall be valid for a period of one-hundred and twenty (120) days from the closing date of the solicitation unless another timeframe is agreed to by all parties. Submission of an offer does not afford rights to the offeror nor obligate Metro in any manner.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p><b>Offer and Presentation Costs</b></p> <p>Metro will not be liable for any costs incurred by an offeror in the preparation of its response to a solicitation, nor for the presentation of its offer and/or participation in any clarifications, discussions, negotiations, or protests.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p><b>Rejection of Offers</b></p> <p>Metro reserves the right to accept or reject, in whole or in part, any offers submitted. The failure of an offeror to promptly supply information in connection with, or with respect to, reasonable requests may be grounds for a determination of non-responsibility.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p><b>Subcontractors</b></p> <p>Offeror must enter all subcontractors on the appropriate form provided as part of the solicitation. The file should be attached to your response in Excel format and named "Subcontractor Form". Include any SBE/SDV and MWBE suppliers on this form.</p> <p>.....</p> <p>Target Value <b>Attached Subcontractor Form</b></p> <p>.....</p> <p>Provide your answer below</p>
<p><b>Assistance to Small (SBE) and/or Service Disabled Veteran-owned (SDV) Businesses</b></p> <p>The Metro Procurement Code (§ 4.44 ) and Regulations (§§ R4.44.020.04) provide options for the Purchasing Agent to include a cost incentive to maximize the participation and performance of approved SBE/SDV businesses. If the Offeror is an SBE/SDV business, Metro considers the work it commits to self-perform. SBE/SDV businesses included in offers, must be registered online with Metro and approved by the Business Assistance Office (BAO) prior to the solicitation closing date. Assistance is provided to offerors who are SBE/SDV, or who need assistance in locating potential SBE/SDV subcontractors or suppliers.</p> <p>For assistance, offerors are encouraged to contact the BAO by email at BAO@Nashville.gov or call the BAO at (615) 880-2814.</p>

<p><b>Standard Solicitation Requirements</b></p> <p>For SBE/SDV information and forms go to the Metro website:  <a href="http://www.nashville.gov/Finance/Procurement/Minority-and-Women-Business-Assistance-(BAO)/SBE-and-SDV.aspx">http://www.nashville.gov/Finance/Procurement/Minority-and-Women-Business-Assistance-(BAO)/SBE-and-SDV.aspx</a></p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p>This solicitation may include an incentive for approved SBE/SDV business participation. The incentive is determined by applying the appropriate scale present in the Procurement Regulations.  <a href="http://www.nashville.gov/Portals/0/SiteContent/Finance/Purchasing/Regulations%2020140206.pdf">http://www.nashville.gov/Portals/0/SiteContent/Finance/Purchasing/Regulations%2020140206.pdf</a></p> <p>The Maximum Acceptable Contract Price (MACP) is established based on the lowest responsive and responsible cost offer. Offers in excess of the MACP will be rejected in ITBs as being outside of the competitive range, and will receive a lower cost score in RFPs regardless of the percentage of SBE/SDV participation. Only approved SBE/SDV businesses will receive consideration. The firm not exceeding the MACP but having the lowest evaluated bid price after consideration of SBE/SDV participation will win the award for an ITB or receive the maximum score for the cost criteria in an RFP. In instances where a SBE/SDV threshold has been established, offers that do not meet the established threshold will not be eligible for any SBE/SDV incentive.</p> <p><b>A 20% threshold for SBE and/or SDV business participation has been set for this solicitation.</b></p> <p><b>**The 20% threshold for SBE and/or SDV business participation does not apply to the allowances identified in Bid Form attachment.**</b></p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p><b>Payments to SBE/SDV and MWBE Subcontractors/Suppliers</b></p> <p>Contractor shall enter these payments into iSupplier and failure to do so may impact payments to Contractor.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p><b>SBE/SDV Misrepresentation</b></p> <p>If Contractor fails to meet SBE/SDV businesses participation committed to in the offer, or it is determined that their SBE/SDV status or the SBE/SDV status of any subcontractor, is shown to be false; Metro may terminate the Contract and charge Contractor for any costs incurred by Metro as a result of the misrepresentation.</p> <p>Misrepresentation may result in debarment.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p><b>Americans with Disabilities Act</b></p> <p>Contractor shall ensure Metro that all services provided through this resulting contract shall be completed in full compliance with the 2010 Americans with Disabilities Act ("ADA") enacted by law on March 15, 2012 and adopted by Metro. Contractor will ensure that participants at public meetings with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p><b>Contractor Personnel Requirements</b></p> <p>Subsequent to submission of an offer and prior to award of a contract, key personnel identified in the offer shall not be changed without the approval of Metro. Any changes in key personnel without Metro</p>

<p><b>Standard Solicitation Requirements</b></p> <p>approval may result in the offer being rejected and not considered for award.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p><b>Unauthorized Work</b></p> <p>The successful offeror shall not begin work until Metro issues a Notice to Proceed or Purchase Order. Any unauthorized work shall be deemed non-compensable and the offeror will have no recourse against Metro.</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p><b>Good Faith Efforts</b></p>
<p><b>Procurement Nondiscrimination Program (PNP) Requirements</b></p> <p>The consideration and contact of minority-owned and/or woman-owned business enterprises (MWBE) with a significant presence in the Nashville MSA, is required for a responsive offer. Offerors must complete and attach to their response the Statements of Interested, Notified, and Successful Subcontractors Form indicating that written notice has been delivered to at least three (3) MWBEs in an appropriate field of work. Offerors must attach the written responses from the three (3) MWBEs. MWBE firms included in offers must be registered with Metro and certification received by BAO prior to the solicitation closing date. <b>Failure to comply with PNP requirements may result in the offer being deemed nonresponsive.</b></p> <p>In the event an offeror submits to use a Metro approved MWBE, a letter of intent signed by both parties must be submitted to BAO by the end of the second business day following issuance of the intent to award notification.</p> <p>For PNP information and forms, go to  <a href="http://www.nashville.gov/Finance/Procurement/Minority-and-Women-Business-Assistance-(BAO)/SMWBE-Lists-and-Forms.aspx">http://www.nashville.gov/Finance/Procurement/Minority-and-Women-Business-Assistance-(BAO)/SMWBE-Lists-and-Forms.aspx</a>.  Attach the PNP Form and outreach documentation to your response as one PDF document named "PNP Documentation".</p> <p>.....</p> <p>Target Value <b>Attached PNP Documentation</b></p> <p>.....</p> <p>Provide your answer below</p>
<p>I/We have made efforts to include MWBE's, certified by certifying entities recognized by the Metropolitan Government, in the procurement process and to ensure that businesses are not discriminated against on the basis of race, ethnicity or gender. <b>Failure to select "Yes" may result in your response being deemed nonresponsive.</b></p> <p>.....</p> <p>Target Value <b>Yes, we have.</b></p> <p>.....</p> <p>Circle one from the response values below:  Yes, we have.  No, and are non-responsive.</p>
<p>I/We have delivered written notice to three available MWBEs certified by certifying entities recognized by the Metropolitan Government for each potential subcontracting or supply category in the Contract AND all potential subcontractors or vendors which requested information on the Contract. <b>Failure to select "Yes" may result in your response being deemed nonresponsive.</b></p>

<b>Good Faith Efforts</b>
<p>.....</p> <p>Target Value <b>Yes, we have.</b></p> <p>.....</p> <p>Circle one from the response values below:  Yes, we have.  No, and are non-responsive.</p>
<p>I/We have provided all potential subcontractors or vendors with adequate and timely information as to the plans and specifications of this project as well as information necessary to provide a bid or quote as well as and the last date and time for receipt of price quotations. <b>Failure to select "Yes" may result in your response being deemed nonresponsive.</b></p> <p>.....</p> <p>Target Value <b>Yes, we have.</b></p> <p>.....</p> <p>Circle one from the response values below:  Yes, we have.  No, and are non-responsive.</p>
<p><b>Additionally, we have made the following Good Faith Efforts to include MWBEs as subcontractors or joint venturers on this project.</b></p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p>I/We have attended a special meeting called to inform business and individuals of subcontracting or supply opportunities.</p> <p>.....</p> <p>Type <b>Optional</b></p> <p>.....</p> <p>Circle one from the response values below:  Yes  No</p>
<p>I/We have, in accordance with normal industry practices, divided the contract into economically feasible segments that can be performed by a MWBE.</p> <p>.....</p> <p>Type <b>Optional</b></p> <p>.....</p> <p>Circle one from the response values below:  Yes  No</p>
<p>I/We have provided a written explanation for rejection of any potential subcontractor or vendor to the BAO, included the name of the firm proposed to be awarded the subcontract or supply agreement, where price competitiveness is not the reason for rejection.</p> <p>.....</p> <p>Type <b>Optional</b></p> <p>.....</p> <p>Circle one from the response values below:  Yes  No</p>
<p>I/We have actively solicited, through sending letters or initiating personal contact, MWBEs in all feasible and appropriate categories providing subcontracting opportunities for the contract under consideration.</p> <p>.....</p> <p>Type <b>Optional</b></p> <p>.....</p> <p>Circle one from the response values below:</p>

<b>Good Faith Efforts</b>
<p>Yes No</p> <p>I/We have utilized the services of available community organizations and associations, contractors' groups, and trade associations known to publicize contracting and procurement opportunities, for the purpose of obtaining assistance in the contacting and recruitment of MWBEs for the Metropolitan Government contract under consideration.</p> <p>.....</p> <p>Type <b>Optional</b></p> <p>.....</p> <p>Circle one from the response values below: Yes No</p>
<p>I/We have advertised in publications of general circulation in the Nashville Metropolitan Statistical Area ( "MSA"), trade publications and other media owned by, or otherwise focused or marketed to MWBEs, and the advertisement identifies and describes the specific subcontracting or other opportunity in reasonable detail.</p> <p>.....</p> <p>Type <b>Optional</b></p> <p>.....</p> <p>Circle one from the response values below: Yes No</p>
<p>I/We have conducted discussions with interested MWBEs in good faith, and provided the same willingness to assist MWBEs as has been extended to any other similarly situated subcontractor.</p> <p>.....</p> <p>Type <b>Optional</b></p> <p>.....</p> <p>Circle one from the response values below: Yes No</p>
<p>I/We have taken steps to ensure that all labor supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain a nondiscriminatory work environment, free of harassment, intimidation, and coercion at all construction sites, offices and other facilities to which employees are assigned to work.</p> <p>.....</p> <p>Type <b>Optional</b></p> <p>.....</p> <p>Circle one from the response values below: Yes No</p>
<b>Insurance Requirements</b>
<p>Any offeror receiving an award shall be required to provide a Certificate of Insurance prior to execution of a contract.</p> <p>The "Description" section must read as follows: <b>Metropolitan Government of Nashville and Davidson County, its officials, officers, employees, and volunteers are named as additional insureds per general liability additional insured endorsement numbered _____ and automobile liability additional insured endorsement numbered _____.</b></p> <p>In the "Certificate Holder" section it must read as follows: <b>Purchasing Agent, Metropolitan Government of Nashville and Davidson County, Metro Courthouse, Nashville, TN 37201.</b></p> <p>The following insurance(s) shall be required:</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>

<b>Insurance Requirements</b>
<p>· General Liability Insurance in the amount of one million (\$1,000,000.00) dollars (if the supplier will be making on-site delivery)</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p>· Automobile Liability Insurance in the amount of one million (\$1,000,000.00) dollars (if supplier will be making on-site deliveries)</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p>· Worker's Compensation Insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee. (Workman's Comp Insurance is not required for companies with fewer than five (5) employees.)</p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<b>Affidavit</b>
<p>Enter your City</p> <p>.....</p> <p>Target Value .</p> <p>.....</p> <p>Provide your answer below</p>
<p>Enter your County</p> <p>.....</p> <p>Target Value .</p> <p>.....</p> <p>Provide your answer below</p>
<p>Enter your State</p> <p>.....</p> <p>Target Value .</p> <p>.....</p> <p>Provide your answer below</p>
<p>Enter your Zip Code</p> <p>.....</p> <p>Target Value .</p>

<b>Affidavit</b>
<p>.....</p> <p>Provide your answer below</p> <p>.....</p>
<p>Affiant states that Offeror has all applicable licenses, including business licenses. Affiant also states that offeror is current on its payment of all applicable gross receipt taxes and personal property taxes. M.C.L. 4.20.065</p> <p>.....</p> <p>Target Value <b>Yes, I so affirm.</b></p> <p>.....</p> <p>Circle one from the response values below:  Yes, I so affirm.  No and are non-responsive.</p>
<p>Affiant affirms that by its employment policy, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age or sex, and are not in violation of, and will not violate, any applicable laws concerning the employment of individuals with disabilities. M.C.L. 4.28.020</p> <p>.....</p> <p>Target Value <b>Yes, I so affirm.</b></p> <p>.....</p> <p>Circle one from the response values below:  Yes, I so affirm.  No and are non-responsive.</p>
<p>Affiant affirms that the offeror nor utilized temporary staffing service employ any person who is not a legal resident of the United States. Any contractor who knowingly violates the provisions of this section is subject to debarment or suspension. M.C.L. 4.40.060</p> <p>.....</p> <p>Target Value <b>Yes, I so affirm.</b></p> <p>.....</p> <p>Circle one from the response values below:  Yes, I so affirm.  No and are non-responsive.</p>
<p>It is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Metro contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned Affiant states that the Offeror has not retained anyone in violation of the foregoing. M.C.L. 4.48.080</p> <p>.....</p> <p>Target Value <b>Yes, I so affirm.</b></p> <p>.....</p> <p>Circle one from the response values below:  Yes, I so affirm.  No and are non-responsive.</p>
<p><b><i>And Further Affiant Sayeth Not:</i></b></p> <p>Name of Company Officer:</p> <p>.....</p> <p>Target Value .</p>

<b>Affidavit</b>
<p>.....</p> <p>Provide your answer below</p>
<p>Title:</p> <p>.....</p> <p>Target Value .</p> <p>.....</p> <p>Provide your answer below</p>
<p><b><i>The provision of false information is a material breach.</i></b></p> <p>.....</p> <p>Target Value <b>Acknowledged.</b></p> <p>.....</p> <p>Circle one from the response values below:</p> <p>Acknowledged.</p> <p>Our offer is non-responsive</p>
<p><i>If the principal officer cannot so attest, the offer will be determined non-responsive.</i></p> <p>.....</p> <p>Target Value .</p> <p>Type <b>No Response Required</b></p>
<p><b>Drug-Free Workplace Affidavit</b></p> <p>As a principal officer or agent, duly authorized to act on behalf of the firm submitting this offer, I submit this Affidavit pursuant to T.C.A. 50-9-114, stating that this firm has a drug-free workplace program that complies with Title 50, Chapter 9, of the Tennessee Code Annotated and we are in compliance with T.C.A. 50-9-114.</p> <p>Further, this firm, by its employment policy, standards, and practices, operates a drug-free workplace program or other drug or alcohol testing program similar, but no less stringent, than Metro's Drug-Free Workplace policy.</p> <p>By so stating, the offeror agrees that failure to satisfy this requirement is a material breach of contract and is subject to all legal claims and damages, termination of contract, and debarment for three years. Does your firm comply? If you select "No", your response may be deemed nonresponsive.</p> <p>.....</p> <p>Target Value <b>Yes, I so affirm.</b></p> <p>.....</p> <p>Circle one from the response values below:</p> <p>Yes, I so affirm.</p> <p>No and are non-responsive.</p>

#### 1.4 Attachments

Name	Data Type	Description
Plans	File	Plans
Subcontractor Form	File	Subcontractor Form
Bid Form	File	Bid Form

Name	Data Type	Description
Specifications	File	Specifications

### 1.5 Response Rules

*This negotiation is governed by all the rules displayed below.*

- Negotiation is restricted to invited suppliers
- Suppliers are allowed to view other suppliers' contract terms, notes and attachments
- Suppliers are allowed to respond to selected lines
- Suppliers are allowed to provide multiple responses
- Buyer may close the negotiation before the Close Date
- Buyer may manually extend the negotiation while it is open

**2 Price Schedule****2.1 Line Information**

Display Rank As **1,2,3...**  
 Ranking **Price Only**  
 Cost Factors **Supplier**

Suppliers see their response price transformed **Yes**

Line	Item, Rev / Job	Target Quantity	Unit	Unit Price	Amount	Bid Minimum Release Amount
1 Total Lines Tab		1	Dollars			

**2.2 Line Details****2.2.1 Line 1 Total Lines Tab**

Category **72100000** Start Price (USD) **Not Specified**  
 Shopping Category **Building construction and support and maintenance and repair services** Target Price (USD) **Not Specified**  
 Minimum Release Amount (USD) **Not Specified**  
 Estimated Total Amount (USD) **Not Specified**

**General**

Description	Target Value	Response Value
SBE/SDV Amount not Self Performed		
SBE/SDV Amount Self Performed		
Total SBE/SDV Amount		
SBE/SDV Percentage not Self Performed		
SBE/SDV Percentage Self Performed		
Total SBE/SDV Percentage		

**Contract Terms and Conditions**

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## Terms and Conditions

### 1. Construction Contract

#### 1.1. Heading

This contract is initiated by and between **The Metropolitan Government of Nashville and Davidson County** ("METRO") and **Enter Legal Name** ("CONTRACTOR") located at **Enter Address, City, ST ZIP**. This contract consists of the following documents:

- *Any properly executed contract amendment (most recent with first priority),*
- *This document and affidavit(s),*
- *The solicitation documentation (made a part of this contract by reference), (RFQ# 629873)*
- *Purchase orders (and PO Changes),*
- *CONTRACTOR's response to solicitation,*
- *Procurement Nondiscrimination Program forms (incorporated by reference).*

In the event of conflicting provisions, all documents shall be construed in the order listed above.

### 2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

#### 2.1. Duties and Responsibilities

CONTRACTOR agrees to provide the goods and services defined in the solicitation per the terms and conditions identified in the solicitation.

This project consist of providing construction services for rehabilitating sanitary sewer systems by furnishing and installing Cured-in-Place Pipe Lining of existing 8-inch through 15-inch diameter sewer segments with service replacements by excavation, trenchless service renewals, cementitious and epoxy manhole rehabs, manhole casting replacements and adjustments.

#### 2.2. Representations of the Contractor

In order to induce the Metropolitan Government to execute this Contract and recognizing that the Metropolitan Government is relying thereon, the Contractor, by executing this Contract, makes the following express representations to the Metropolitan Government:

- The Contractor is fully qualified to act as the contractor for this Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the designer and builder for the Project;
- The Contractor has become familiar with the Project site and the local conditions under which the Project is to be constructed and operated;
- The Contractor has received, reviewed and carefully examined all of the documents which make up this Contract and has found them to be generally sufficient to indicate and convey understanding of the terms and

conditions for constructing and completing the Project; and the Contractor further agrees to notify the Architect/Engineer immediately of all conflicts, errors, ambiguities, or discrepancies that are discovered in the contract, including, but not limited to the Plans and Specifications.

- The Contractor had access to the site for examinations, explorations, tests and studies prior to submitting Contractor's Proposal, and relied exclusively upon the Contractor's own estimates and investigations and other data which was necessary for full and complete information upon which the Contractor's Proposal was based; in addition to the representations contained in the Contractor's Proposal.

## **2.3. Stormwater Management**

### **Stormwater Management**

All activities performed in under this contract shall be conducted in full compliance with Metro Code of Law §§ 15.64 et al (Stormwater Management) including §§ 15.64.205

(<http://www.nashville.gov/Water-Services/Pollution-Prevention/Illicit-Discharge-Ordinance.aspx>).

This requirement pertains to Unlawful/Prohibited Discharges to the Metro Storm Sewer System/Community Waters. It prohibits the discharge of "wastewater" and "non-stormwater" discharges such as wash water, process wastewater, etc. into the Municipal Storm Sewer System (MS4) or into Community Waters. Any questions relating these provisions should be routed to the Metro Water Services NPDES Office at (615) 880-2420. This requirement shall apply to all Metro construction projects in the service area, including areas outside Davidson County.

Contractor shall bear responsibility for all of Contractor's actions that cause MWS to violate project regulatory permits or Federal, State or local environmental regulations. Such permits and regulations may include, but are not limited to:

- U.S. Army Corps of Engineers 404 Permits
- TDEC Aquatic Resource Alteration Permits
- TDEC Construction General Permits
- Any State or Federal permits/approvals related to Threatened and Endangered Species
- Metro Individual NPDES permits
- Metro Code §15.64.205 - Metro Illicit Discharge Ordinance
- Metro Stormwater Management Manual

Contractor's responsibility shall include, but not be limited to, payment of all fines, assessments and/or civil penalties incurred due to Contractor's work, actions, design or installation and payment for any mitigation measures required due to the violation and cleanup associated with any violation.

## **3. CONTRACT TERM**

### **3.1. Contract Term**

The term of this contract will begin on the date this contract is approved by all required parties and filed in the office of the Metropolitan Clerk. The initial contract term will end twenty four (24) months from the beginning date.

This contract may be extended by contract amendment. The option to extend shall be exercised by and in the discretion of the Purchasing Agent. In no event shall the term of this contract, including extensions, exceed sixty

(60) months from the date of filing with the Metropolitan Clerk's Office.

### **3.2. COMPENSATION**

#### **3.2.1. Compensation for Construction**

The Metropolitan Government shall pay and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of all its obligations hereunder, the contract price of \$ TBD. The price set forth in this Subparagraph shall constitute the Contract Price, which shall not be modified except as provided in this Contract. Contractor agrees that the contract price is subject to upward or downward revision to reflect variation in expected quantities of unit priced work, use of allowances, increases and decreases in the scope of work and other changes contemplated by and made in accordance with the terms of this Contract. Notwithstanding any other provision of this Contract, Contractor is not guaranteed to earn any minimum amount of compensation. Rather, the total amount of compensation Contractor may earn under this Contract shall be based on the total number of authorized and approved units of work performed.

Within TBD calendar days of the Effective Date of this Contract, the Contractor shall prepare and present to the Metropolitan Government the Contractor's Schedule of Values, including a complete detailed breakdown of General Conditions and Fee, apportioning the Contract Price among the different elements of the Project, for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in a format acceptable to the Metropolitan Government, with such detail and supporting information as the Metropolitan Government requests. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. Violation of this provision by the Contractor shall constitute a material breach of this Contract. The Contractor's Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been approved in writing by the Metropolitan Government.

The Metropolitan Government shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Paragraph. On or before the tenth (10th) day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit a Payment Request for the period ending on the last day of the prior month. Said Payment Request shall be submitted in the form attached hereto as (Contractor's Payment Request). Therein, the Contractor may request payment for ninety five percent (95%) of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if off site storage is in a bonded warehouse approved in writing by the Metropolitan Government), less the total amount of previous payments received from the Metropolitan Government.

Any request for payment on account of stored materials or equipment, whether on or off site, must be accompanied by written proof that the Metropolitan Government will receive free and clear title to such materials or equipment once payment is made, a bill of materials, and that they are fully insured by Contractor against loss or damage.

When the project has reached 50% completion, as determined by Metro, Metro shall have the right but not the obligation to allow the contractor to request payment for 98% of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if off site storage is approved in writing by the Metropolitan Government), less the total amount of previous payments received from the

Metropolitan Government. When the project reaches substantial completion, the contractor may request payment for ninety eight percent (98%) of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (etc. as described above) less the estimated amount described below for (liquidated damages, punch list items, pending claims, defective and non conforming work, etc.)

As a condition precedent to payment, the Contractor shall also furnish to the Metropolitan Government properly executed waivers of lien or other claims, in a form acceptable to the Metropolitan Government, from all subcontractors, materialmen, suppliers or others having lien or other claim rights, wherein said subcontractors, materialmen, suppliers or others having lien or other claim rights shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project. Each Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of work has reached the level for which payment is requested, that the work has been properly installed or performed in strict compliance with this Contract and that the Contractor knows of no reason why payment should not be made as requested. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all work for which the Metropolitan Government has previously paid is free and clear of any lien, claim or other encumbrance of any person whatsoever. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all work, materials and equipment included in such payment shall be vested in the Metropolitan Government. The Metropolitan Government shall make every attempt to make payment to the Contractor within thirty (30) days following the submission of a Payment Request, in form acceptable to the Metropolitan Government. The amount of each such payment shall be the amount specified in this paragraph less such amounts, if any, otherwise owing by the Contractor to the Metropolitan Government or which the Metropolitan Government shall have the right to withhold as authorized by this Contract. The Architect/Engineers approval of the Contractors Payment Requests shall not preclude the Metropolitan Government from the exercise of its rights as set forth below. In the event the Metropolitan Government rejects a Payment Request for failing to comply with the requirements of this Paragraph, payment shall not be due until thirty (30) days following correction of all noted defects and resubmission by the Contractor.

If the Pay Request is rejected for any bonafide reason, the 30 day period shall start over when an acceptable Pay Request is received.

Contractor may withdraw retainage by depositing securities with the Metropolitan Government's Treasurer in accordance with the provisions of T.C.A. § 12-4-108.

When payment is received from the Metropolitan Government, the Contractor shall within fourteen (14) calendar days pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for the work covered by such payment. In the event the Metropolitan Government becomes informed that the Contractor has not paid a subcontractor, materialman, laborer or supplier as provided herein, the Metropolitan Government shall have the right, but not the duty, to issue future checks and payments to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Metropolitan Government, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Metropolitan Government to repeat the procedure in the future.

Neither payment to the Contractor, utilization of the Project for any purpose by the Metropolitan Government, nor

any other act or omission by the Metropolitan Government shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Contract.

Notwithstanding any other provision of this Agreement, the Metropolitan Government shall have the right to refuse to make any payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

- The quality of a portion, or all, of the Contractor's work not being in accordance with the requirements of this Contract;
- The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;
- The Contractor's rate of progress being such that, in the Metropolitan Government's opinion, substantial or final completion, or both, may be inexcusably delayed;
- The Contractor's failure to use Contract funds, previously paid the Contractor by the Metropolitan Government, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
- Claims made, pending or known against the Metropolitan Government or its property in relation to this contract or the acts or omissions of the Contractor or any of its subcontractors;
- Loss caused by the Contractor; and,
- The Contractor's failure or refusal to perform any of its obligations to the Metropolitan Government.

In the event that the Metropolitan Government makes written demand upon the Contractor for amounts previously paid by the Metropolitan Government as contemplated in this paragraph , the Contractor shall promptly comply with such demand.

If within forty-five (45) days from the date payment to the Contractor is due, the Metropolitan Government, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, the Contractor shall have the right to cease work until receipt of proper payment after first providing ten (10) days written notice to the Metropolitan Government of the Contractor's intent to cease work.

When Substantial Completion has been achieved, the Contractor shall notify the Metropolitan Government in writing and also shall furnish a listing of those matters yet to be finished. The Metropolitan Government or its designee will thereupon conduct an inspection to confirm that the work is in fact substantially complete. Upon its confirmation that the Contractor's work is substantially complete, the Metropolitan Government will so notify the Contractor in writing and will in the notice set forth the date of Substantial Completion.

If the Metropolitan Government finds that the Contractor's work is not substantially complete, and is required to repeat all, or any portion, of its Substantial Completion inspection, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by the Metropolitan Government from any payment then or thereafter due to the Contractor.

Upon Substantial Completion, the Metropolitan Government shall pay the Contractor an amount sufficient to increase total payments to the Contractor to ninety eight percent (98%) of the Contract Price less any amounts

attributable to liquidated damages and deductions contemplated by this Agreement including the total estimated cost or value of: (i) incomplete items including all punch list items, (ii) defective and nonconforming work; and (iii) outstanding or threatened claims against the Metropolitan Government relating to the Project. The estimated value of incomplete and punch list items will be determined by the Metropolitan Government, acting in its sole discretion.

When the Project is fully complete and the Contractor is ready for a final inspection, it shall notify the Metropolitan Government thereof in writing. Thereupon, the Metropolitan Government or its designee will perform a final inspection of the Project. If the Metropolitan Government confirms that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the Metropolitan Government hereunder, the Metropolitan Government will so notify the Contractor. If the Metropolitan Government finds that the Project is not finally complete and is required to repeat all or any part of its final inspection of the Project, the Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by the Metropolitan Government from the Contractor's final payment.

When the Metropolitan Government reasonably believes that Substantial Completion or final completion will be inexcusably delayed, the Metropolitan Government shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Metropolitan Government to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion or Final Completion, or any part thereof, for which the Metropolitan Government has withheld payment, the Metropolitan Government shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

Prior to being entitled to receive final payment, and as a condition precedent thereto, the Contractor shall furnish the Metropolitan Government, in the form and manner required by the Metropolitan Government:

- An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment and material suppliers and other third parties in connection with the Project have been paid or otherwise satisfied;
- Separate releases of claims or claim waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has or might have a claim against the Metropolitan Government or the payment bond;
- Consent(s) of surety to final payment; and,
- All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required herein, as part of or prior to Project close-out.

The Metropolitan Government shall, subject to its rights set forth in this Paragraph, make every attempt to make final payment of all sums due the Contractor within forty-five days after notifying Contractor of the achievement of final completion.

### **3.2.2. Other Fees**

There will be no other charges or fees for the performance of this contract. METRO will make reasonable efforts to make payments within 30 days of receipt of invoice but in any event shall make payment within 60 days. METRO will make reasonable efforts to make payments to Small Businesses within 15 days of receipt of invoice but in any event shall make payment within 60 days.

### **3.2.3. Electronic Payment**

All payments shall be effectuated by ACH (Automated Clearing House).

## **4. TERMINATION**

### **4.1. Breach**

Should CONTRACTOR fail to fulfill in a timely and proper manner its obligations under this contract or if it should violate any of the terms of this contract, METRO shall have the right to immediately terminate the contract. Such termination shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of any breach by CONTRACTOR.

### **4.2. Lack of Funding**

Should funding for this contract be discontinued, METRO shall have the right to terminate the contract immediately upon written notice to CONTRACTOR.

### **4.3. Notice**

METRO may terminate this contract at any time upon thirty (30) days written notice to CONTRACTOR. Should METRO terminate this Contract, the CONTRACTOR shall immediately cease work and deliver to METRO, within thirty (30) days, all completed or partially completed satisfactory work, and METRO shall determine and pay to CONTRACTOR the amount due for satisfactory work.

## **5. NONDISCRIMINATION**

### **5.1. Metro's Nondiscrimination Policy**

It is the policy of the METRO not to discriminate on the basis of age, race, sex, color, national origin, sexual orientation, gender identity, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

### **5.2. Nondiscrimination Requirement**

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in METRO's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with METRO or in the employment practices of METRO's CONTRACTORS. **CONTRACTOR certifies and warrants that it will comply with this nondiscrimination requirement.** Accordingly, all Proposers entering into contracts with METRO shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

### **5.3. Procurement Nondiscrimination Program Requirement**

The consideration and contact of minority-owned and/or woman-owned business enterprises ("MWBE") is required for a responsive offer to any solicitation. The provision of the following items shall be part of each individual solicitation response:

### **5.4. Covenant of Nondiscrimination**

Your firm has committed to the Covenant of Nondiscrimination when registering with METRO to do business. To review this document, go to [Nashville.gov](http://Nashville.gov) and visit the Procurement or Business Assistance web pages (it is NOT necessary to resubmit this with each bid/proposal/contract).

### **5.5. Statement of Interested, Notified, Bid Amount, and Successful MWBEs Selected**

CONTRACTOR must provide the provided form indicating that CONTRACTOR has delivered written notice to at least three (3) available MWBEs if use of MWBEs is reasonable and if the Business Assistance Office can provide at least three (3) MWBEs for the applicable category. The interested, notified, successful and unsuccessful bid prices are one of several responses required on the form.

### **5.6. Letter of Intent to Perform as a Subcontractor/Joint Venture**

In the event that CONTRACTOR proposes to use subcontractors, sub-consultants, suppliers and/or joint ventures, a letter of intent signed by the contractor, subcontractor, sub-consultant, supplier, and/or joint venturer must be submitted to METRO by the end of the second business day following issuance of the intent to award letter. Only subcontractors listed in the submittal for each individual solicitation offer may be employed for that work. Substitute subcontractors may only be used with prior notice and written approval from METRO and the Business Assistance Office ("BAO")."

### **5.7. Registration and Certification**

To be considered for the purpose of being responsive, the subcontractor, subconsultant, supplier and/or joint venturer must be registered online with METRO by the individual solicitation due date.

### **5.8. Americans with Disabilities Act (ADA)**

CONTRACTOR assures METRO that all services provided through this Contract shall be completed in full compliance with the Americans with Disabilities Act ("ADA") 2010 ADA Standards for Accessible Design, enacted by law March 15, 2012, as has been adopted by METRO. CONTRACTOR will ensure that participants with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

## **6. INSURANCE**

**6.1. Proof of Insurance**

During the term of this Contract, for any and all awards, CONTRACTOR shall, at its sole expense, obtain and maintain in full force and effect for the duration of this Contract, including any extension, the types and amounts of insurance identified below by a checked box. Proof of insurance shall be required naming METRO as additional insured and identifying the Purchase Order on the Acord document.

**6.2. General Liability Insurance**

In the amount of one million (\$1,000,000.00) dollars

**6.3. Automobile Liability Insurance**

In the amount of one million (\$1,000,000.00) dollars (if vendor will be making on-site deliveries)

**6.4. Worker's Compensation Insurance**

with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee (Not required for companies with fewer than five (5) employees).

**6.5. Other Insurance Requirements**

Prior to commencement of services, CONTRACTOR shall furnish METRO with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to:

**DEPARTMENT OF LAW  
INSURANCE AND RISK MANAGEMENT  
METROPOLITAN COURTHOUSE, SUITE 108  
PO BOX 196300  
NASHVILLE, TN 37219-6300**

Provide certified copies of endorsements and policies if requested by METRO in lieu of or in addition to certificates of insurance.

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

Maintain such insurance from the time services commence until services are completed and attach the certificates of insurance in the METRO system. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by METRO as a material breach of contract.

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

Require all subcontractors to maintain during the term of the agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/ Employers Liability insurance (unless

subcontractor's employees are covered by CONTRACTOR's insurance) in the same manner as specified for CONTRACTOR. CONTRACTOR shall file subcontractor's certificates of insurance in METRO's system. Any deductibles and/or self-insured retentions greater than \$10,000.00 must be disclosed to and approved by METRO **prior to the commencement of services.**

If the CONTRACTOR has or obtains primary and excess policy(ies), there shall be no gap between the limits of the primary policy and the deductible features of the excess policies.

#### **6.6. Such insurance shall:**

Contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

For any claims related to this agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects METRO, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering METRO, its officials, officers, employees, and volunteers shall be excess of CONTRACTOR's insurance and shall not contribute with it.

Automotive Liability Insurance including vehicles owned, hired, and non-owned. Said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of CONTRACTOR.

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

## **7. CONSTRUCTION SPECIFIC TERMS AND CONDITIONS**

### **7.1. Intent and Interpretation**

With respect to the intent and interpretation of this Contract, the Metropolitan Government and the Contractor agree as follows:

Unless specifically stated to be the responsibility of the Metropolitan Government, anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price.

Nothing contained in this Contract shall create, or be interpreted to create, privity or any other relationship whatsoever between the Metropolitan Government and any entity except the Contractor;

Whenever a word, term or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein;

second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;

The words "include", "includes" or "including", as used in this Contract shall be deemed to be followed by the phrase, "without limitation";

The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract;

The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings and other submittals and shall give written notice to the Metropolitan Government and the Architect/Engineer of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected work. The express or implied approval of the Metropolitan Government or the Architect/Engineer of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Metropolitan Government has requested the Architect/Engineer to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction; and,

In the event of any conflict, discrepancy or inconsistency among any of the documents which make up this Contract, the following shall control:

- As between figures given on plans and scaled measurements, the figures shall govern;
- As between large scale plans and small scale plans, the large scale plans shall govern;
- As between plans and specifications, the requirements of the specifications shall govern;
- As between this document and the plans or specifications, this document shall govern.
- Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. When there are discrepancies between the indicated sum of any column of figures and the correct sum thereof, the Metropolitan Government has the right, at its option, to reject the Bid or to accept the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

## **7.2. Contractor's Performance**

The Contractor shall perform all of the work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

- Construction of the Project
- Construction Services consisting of the provision and the prompt payment therefor, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities required for construction and all necessary building permits and other permits required for the construction of the Project, including any use and occupancy or similar permit(s) that may be required before the completed Project may be put in use;
- The furnishing and maintenance of any required surety bonds and insurance; and

- The creation and submission to the Metropolitan Government, bound in hardback notebooks, of five (5) sets of all manuals, operating instructions, bonds, warranties, guarantees, maintenance instructions, et cetera, and one set of detailed and comprehensive reproducible mylar as-built drawings depicting all as-built construction. Said as-built information shall be submitted to the Metropolitan Government upon final completion of the Project and receipt of same by the Metropolitan Government shall be a condition precedent to final payment to the Contractor.

### **7.3. Time for Contractor's Performance and Liquidated Damages**

The Contractor shall commence the performance of this Contract ("Commencement of Work Date") within TBD calendar days after the date of issuance to Contractor of a Notice to Proceed by the Metropolitan Government, however, in no event shall the Notice to Proceed be issued or performance commence prior to the Effective Date of this Contract as hereafter set out. Once timely commenced, Contractor shall diligently continue its performance to and until final completion of the Project. The Contractor shall accomplish Substantial Completion of the Project within TBD calendar days after the date that the Notice to Proceed is issued. The Contractor shall accomplish Final Completion of the Project within TBD calendar days after the date that Substantial Completion is accomplished.

The term "Substantial Completion" as used herein shall mean that point at which the Project is at a level of completion in strict compliance with this Contract such that the Metropolitan Government or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete and such partial use or occupancy shall not be evidence of Substantial Completion. The term "Final Completion" as used herein shall mean that point at which the Project is 100% complete and in conformance with the Contract.

Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion.

The Metropolitan Government will suffer financial loss, in addition to any increased costs of completion of the Project, if the project is not Substantially Complete within the time allowed. Contractor and Contractor's Surety shall be liable for and shall pay to the Metropolitan Government as liquidated damages to compensate for the loss of use of the Project for the period of delay, and not as penalty, the sum of one thousand five hundred dollars \$1,500.00 for each calendar day of delay until the Project is Substantially Complete. Such liquidated damages do not include any additional costs of this Project caused by delay (such as additional costs of construction, additional architect or engineer fees or other liquidated costs) and Contractor, in addition to liquidated damages for the cost of delay itself, shall be liable to the Metropolitan Government for same. Contractor agrees that the contract time and the amount established by this Paragraph for liquidated damages are reasonable.

The Metropolitan Government will suffer financial loss, in addition to any increased costs of completion of the Project, if the Contractor fails to achieve Final Completion within the time period set forth in Paragraph 9A should be herein. Contractor and Contractor's Surety shall be liable for and shall pay to the Metropolitan Government as liquidated damages to compensate for the losses and damages suffered by any delay, and not as penalty, the sum of one thousand dollars \$1,000.00 for each calendar day of delay until the Project is finally complete. Such liquidated damages do not include any additional costs of this Project caused by delay (such as additional costs of construction, additional Architect/Engineer fees or other liquidated costs) and Contractor, in addition to liquidated damages for the cost of delay itself, shall be liable to the Metropolitan Government for same.

All limitations of time set forth herein are material and are of the essence of this contract.

#### **7.4. Change Orders**

Changes to the work within the general scope of this Contract may be ordered by Change Order, Change Authorization, or Field Authorization and must be on the Change Order, Change Authorization, or Field Authorization documents Approved by Metro. In addition, the Metropolitan Government may order minor changes--those that do not involve a change in the Contract Price and do not involve a change in the time for the Contractor's performance--that the Metropolitan Government deems necessary for performance of and are consistent with the intent of this Contract. The Contractor shall proceed with any such change(s).

#### **7.5. Cease and Desist Order**

In the event the Contractor fails or refuses to perform the work as required herein, the Metropolitan Government may instruct the Contractor to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Metropolitan Government and shall not proceed further until the cause for the Metropolitan Government's instruction has been corrected, or no longer exists, or the Metropolitan Government instructs that the work may resume. In the event the Metropolitan Government issues such instruction to cease and desist and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurances to the Metropolitan Government that the cause for such instruction will be eliminated or corrected, then the Metropolitan Government shall have the right, but not the obligation, to carry out the work with its own force or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such work. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Metropolitan Government may have against the Contractor.

#### **7.6. Hazardous Materials and Waste**

Unless otherwise specified in the plans and specifications, it is the responsibility of the Metropolitan Government to remove and dispose of pre-existing hazardous materials or waste that are at the project site. Hazardous materials and waste include asbestos, polychlorinated biphenyl ("PCB"), petroleum, and radioactive material. It is the responsibility of the Contractor to immediately notify the Metropolitan Government as soon as any hazardous materials or waste are discovered.

#### **7.7. Subcontractors**

Upon execution of this Contract, the Contractor shall identify to the Metropolitan Government, in writing, any subcontractor not previously identified on the Project. The Metropolitan Government shall, in writing, state any objection the Metropolitan Government may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with reference to whom the Metropolitan Government objects. Should a proposed subcontractor that was listed when Contractor's Proposal was submitted (this does not apply to subcontractors listed after that time) be disapproved, and the Contractor provides proof that the replacement subcontractor will charge contractor a higher price than the disapproved subcontractor, then the Contract Price may

be adjusted at a rate equal to the difference between the price charged contractor by the new subcontractor and the price charged by the disapproved subcontractor.

Failure of the Metropolitan Government to object to the subcontractor shall not impose on the Metropolitan Government any liability or responsibility for the performance or character of said subcontractor.

All subcontracts shall afford the Contractor rights against the subcontractor that correspond to those rights afforded to the Metropolitan Government against the Contractor herein, including those rights of Contract termination as set forth in this contract.

### **7.8. Discovering and Correcting Defective or Incomplete Work**

- In the event that the Contractor covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the Metropolitan Government, such work shall be uncovered and displayed for the Metropolitan Government's inspection upon request and shall be reworked at no cost in time or money to the Metropolitan Government.
- If any of the work is covered, concealed or obscured in a manner not covered by the preceding paragraph, it shall, if directed by the Metropolitan Government, be uncovered and displayed for the Metropolitan Government. If the uncovered work conforms strictly to this Contract, the costs incurred by the Contractor to uncover and subsequently replace such work shall be borne by the Metropolitan Government. Otherwise, such costs shall be borne by the Contractor.
- The Contractor shall, at no cost in time or money to the Metropolitan Government, correct work rejected by the Metropolitan Government as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the Metropolitan Government for all testing, inspections and other expense incurred as a result thereof.
- In addition to its warranty obligations set forth elsewhere herein, the Contractor shall be specifically obligated to correct any and all defective or nonconforming work without additional compensation for a period of twelve (12) months following Final Completion upon written notice from the Metropolitan Government.
- The Metropolitan Government may, but shall in no event be required to, choose to accept defective or nonconforming work. In such event, the Contract Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Metropolitan Government for the acceptance of the defective or nonconforming work, the Contractor shall, upon written demand from the Metropolitan Government, pay the Metropolitan Government such remaining compensation for accepting defective or nonconforming work.

### **7.9. The Metropolitan Government's Right to Suspend Contractor's Performance**

- The Metropolitan Government shall have the right at any time to direct the Contractor to suspend the performance, or any designated part thereof, for any reason whatsoever, or without reason. If any such suspension is directed by the Metropolitan Government, the Contractor shall immediately comply with same and shall demobilize as directed by the Metropolitan Government.
- In the event the Metropolitan Government directs a suspension of performance under this Paragraph 23, through no fault of the Contractor, the Metropolitan Government shall pay the Contractor as full compensation for

such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- o demobilization and remobilization, including such costs paid to subcontractors;
- o preserving and protecting work in place; and
- o storage of materials or equipment purchased for the Project, including insurance thereon.

#### **7.10. Surety Bonds**

The Contractor shall furnish separate performance and payment bonds to the Metropolitan Government. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Orders executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed adjusted by like amount. The performance and payment bonds furnished by the Contractor shall be in a form suitable to the Metropolitan Government and shall be executed by a surety, or sureties, licensed to do business in Tennessee and reasonably acceptable to the Metropolitan Government. Bonds shall be accompanied by a power of attorney indicating that the person executing the bond is doing so on behalf of the surety. The power of attorney shall have been conferred upon the attorney-in-fact prior to the date of the bond. The power of attorney shall show the date of appointment of the attorney-in-fact and that the appointment and powers have not been revoked and remain in effect.

#### **7.11. Project Records**

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any subcontractor of the Contractor shall be made available to the Metropolitan Government for inspection and copying upon written request by the Metropolitan Government. Furthermore, said documents shall be made available, upon request by the Metropolitan Government, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos or other writings or things which document the Project, its design and its construction. Said records expressly include those documents reflecting the cost of construction by the Contractor, including all subcontracts and payroll records of the Contractor and Subcontractors.

The Contractor shall maintain and protect these documents for no less than four (4) years after final completion of the Project or for a longer period of time as may be required by law or good construction practice. Contractor shall also retain, for no less than four (4) years after final completion of the Project, all working papers and other documents utilized by Contractor in preparing the Proposal for the Contract. In the event of litigation, said working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

#### **7.12. Metropolitan Government Property**

Any Metropolitan Government property, including but not limited to books, records and equipment, that is in Contractor's possession shall be maintained by Contractor in good condition and repair, and shall be returned to Metropolitan Government by Contractor upon termination of the contract. All goods, documents, records, and other work product and property produced during the performance of this contract are deemed to be Metropolitan

Government property.

## **8. GENERAL TERMS AND CONDITIONS**

### **8.1. Taxes**

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

### **8.2. Warranty**

CONTRACTOR warrants that for a period of one year from date of delivery and/or installation, whichever is later, the goods provided, including software, shall be free of any defects that interfere with or prohibit the use of the goods for the purposes for which they were obtained.

During the warranty period, METRO may, at its option, request that CONTRACTOR repair or replace any defective goods, by written notice to CONTRACTOR. In that event, CONTRACTOR shall repair or replace the defective goods, as required by METRO, at CONTRACTOR's expense, within thirty (30) days of written notice.

Alternatively, METRO may return the defective goods, at CONTRACTOR's expense, for a full refund. Exercise of either option shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of CONTRACTOR's breach of warranty.

### **8.3. License**

CONTRACTOR warrants and represents that it is the owner of or otherwise has the right to and does hereby grant METRO a license to use any software provided for the purposes for which the software was obtained or proprietary material set forth in METRO's solicitation and/or the CONTRACTOR's response to the solicitation.

### **8.4. Copyright, Trademark, Service Mark, or Patent Infringement**

CONTRACTOR shall, at its own expense, be entitled to and shall have the duty to defend any suit that may be brought against METRO to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. CONTRACTOR shall further indemnify and hold harmless METRO against any award of damages and costs made against METRO by a final judgment of a court of last resort in any such suit. METRO shall provide CONTRACTOR immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable CONTRACTOR to do so. No costs or expenses shall be incurred for the account of CONTRACTOR without its written consent. METRO reserves the right to participate in the defense of any such action. CONTRACTOR shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.

If the products or services furnished under this contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing CONTRACTOR's obligation to satisfy the final award, CONTRACTOR

may at its option and expense:

**Procure**

Procure for METRO the right to continue using the products or services.

**Replace**

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

**Remove**

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

**Provide**

Provided, however, that CONTRACTOR will not exercise the Remove option above until CONTRACTOR and METRO have determined that the Procure and/or Replace options are impractical. CONTRACTOR shall have no liability to METRO, however, if any such infringement or claim thereof is based upon or arises out of:

The use of the products or services in combination with apparatus or devices not supplied or else approved by CONTRACTOR;

The use of the products or services in a manner for which the products or services were neither designated nor contemplated; or

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

**8.5. Maintenance of Records**

CONTRACTOR shall maintain documentation for all charges against METRO. The books, records, and documents of CONTRACTOR, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by METRO or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles. In the event of litigation, working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

All documents and supporting materials related in any manner whatsoever to the contract or any designated portion thereof, which are in the possession of CONTRACTOR or any subcontractor or sub-consultant shall be made available to METRO for inspection and copying upon written request from METRO. Said documents shall also be made available for inspection and/or copying by any state, federal or other regulatory authority, upon request from METRO. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos or other writings or things which document the procurement and/or performance of this contract. Said records expressly include those documents reflecting the cost, including all subcontractors' records and payroll records of CONTRACTOR and subcontractors.

**8.6. Monitoring**

The CONTRACTOR's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by METRO, the Department of Finance, the Division of Internal Audit, or their duly appointed representatives.

### **8.7. METRO Property**

Any METRO property, including but not limited to books, records and equipment that is in CONTRACTOR's possession shall be maintained by CONTRACTOR in good condition and repair, and shall be returned to METRO by CONTRACTOR upon termination of the contract. All goods, documents, records, and other work product and property produced during the performance of this contract are deemed to be METRO property. All documents which make up this Contract; all other documents furnished by METRO; all conceptual drawings, design documents, closeout documents, and other submittals by CONTRACTOR; and, all other original works of authorship, whether created by METRO or CONTRACTOR embodied in any tangible medium of expression, including, without limitation, pictorial, graphic, sculptural works, two (2) dimensional works, and three (3) dimensional works.

The CONTRACTOR may keep one (1) copy of the aforementioned documents upon completion of the contract; provided, however, that in no event shall the CONTRACTOR use, or permit to be used, any portion of the documents on other projects without METRO's prior written authorization.

### **8.8. Modification of Contract**

This contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

### **8.9. Partnership/Joint Venture**

This Contract shall not in any way be construed or intended to create a partnership or joint venture between the Parties or to create the relationship of principal and agent between or among any of the Parties. None of the Parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this Contract.

### **8.10. Waiver**

No waiver of any provision of this contract shall affect the right of any party to enforce such provision or to exercise any right or remedy available to it.

### **8.11. Employment**

CONTRACTOR shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

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

Violation of either of these contract provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) days, to the satisfaction of METRO.

### **8.12. Compliance with Laws**

CONTRACTOR agrees to comply with all applicable federal, state and local laws and regulations.

#### **8.13. Taxes and Licensure**

CONTRACTOR shall have all applicable licenses and be current on its payment of all applicable gross receipt taxes and personal property taxes.

#### **8.14. Ethical Standards**

CONTRACTOR hereby represents that CONTRACTOR has not been retained or retained any persons to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards, which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts.

#### **8.15. Indemnification and Hold Harmless**

CONTRACTOR shall indemnify and hold harmless METRO, its officers, agents and employees from:

- A. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of CONTRACTOR, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the contract, and,
- B. Any claims, damages, penalties, costs and attorney fees arising from any failure of CONTRACTOR, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- C. In any and all claims against METRO, its officers, agents, or employees, by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or any subcontractor under workers' compensation acts, disability acts or other employee benefit acts.
- D. METRO will not indemnify, defend or hold harmless in any fashion the CONTRACTOR from any claims arising from any failure, regardless of any language in any attachment or other document that the CONTRACTOR may provide.
- E. CONTRACTOR shall pay METRO any expenses incurred as a result of CONTRACTOR's failure to fulfill any obligation in a professional and timely manner under this Contract.

#### **8.16. Attorney Fees.**

CONTRACTOR agrees that in the event either party takes legal action to enforce any provision of the contract or to obtain a remedy for any breach of this contract, and in the event METRO prevails in such action, CONTRACTOR shall pay all expenses of such action incurred at any and all stages of the litigation, including costs, and reasonable attorney fees for METRO.

**8.17. Assignment--Consent Required**

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

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

**METRO'S CHIEF ACCOUNTANT**

**DIVISION OF ACCOUNTS**

**DEPARTMENT OF FINANCE**

**PO BOX 196300**

**NASHVILLE, TN 37219-6300**

Funds Assignment Requests should contain complete contact information (contact person, organization name, address, telephone number, and email) for Metro to use to request any follow up information needed to complete or investigate the requested funds assignment. To the extent permitted by law, Metro has the discretion to approve or deny a Funds Assignment Request.

**8.18. Entire Contract**

This contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

**8.19. Force Majeure**

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

**8.20. Governing Law**

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

**8.21. Venue**

Any action between the parties arising from this agreement shall be maintained in the courts of Davidson County, Tennessee.

**8.22. Severability**

Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

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