

# REQUEST FOR QUALIFICATIONS

## ARCHITECTURAL/ENGINEERING INDEFINITE DELIVERY, INDEFINITE QUALITY (IDIQ)



March 1, 2017

## Table of Contents

OBJECTIVE .....	4
BACKGROUND .....	5
GENERAL INFORMATION FOR PROPOSERS .....	5
GENERAL CONDITIONS .....	8
1.0 DEFINITIONS .....	8
2.0 SUBMITTAL REQUIREMENTS .....	24
3.0 EVALUATION CRITERIA .....	26
4.0 AWARD CRITERIA .....	27
5.0 CONTRACT AND CONTRACT NEGOTIATIONS .....	28
6.0 PROCUREMENT SCHEDULE .....	28
7.0 SCOPE OF SERVICES .....	29
8.0 FEDERAL CLAUSES FOR PROCUREMENT OF PROFESSIONAL SERVICES .....	36
EXHIBIT A .....	52
EXHIBIT B .....	53
EXHIBIT C .....	54
EXHIBIT D .....	55
EXHIBIT E .....	56
EXHIBIT F .....	57
EXHIBIT G .....	58
EXHIBIT H .....	59
EXHIBIT I .....	60

**REQUEST FOR QUALIFICATIONS**  
**("RFQ")**  
**SPECIFICATION NO. 16-16**  
**ARCHITECTURAL/ENGINEERING IDIQ**

**OBJECTIVE**

The Transit Authority of the City of Omaha, d/b/a Metro ("Authority"), is utilizing a qualifications-based procurement process and hereby Requests Qualifications ("Statement of Qualifications") from responsible, qualified firms to provide Architectural and Engineering Services. Metro encourages all qualified businesses, including women and minority owned businesses, to submit Statements of Qualifications as prime consultants, sub-consultants or joint ventures. Metro intends to enter into a professional services contract with a three (3) year term, with two (2) additional one (1) year renewals.

The selected consultant should demonstrate the technical qualifications and experience to provide engineering, architectural, design, planning, utility coordination, and project management services for the projects outlined in this RFQ.

Metro plans a number of projects during the next three (3) years. These projects may include new bus shelters, upgrading existing shelters, replacement of Metro's current fueling system, installation of Compressed Natural Gas (CNG) fueling facilities and capital projects in and around Metro's Administrative Facility and Transit Centers. All projects are contingent upon successful funding from Federal, State and Local Sources.

The Consultant shall provide the services described in the Scope of Services and will be responsible for all aspects of the coordination and management of planning and engineering activities. The Consultant will work under the direction of the Authority's designated Project Manager, and will coordinate activities with the Authority's staff, legal counsel, transit operations, other departments and technical consultants as necessary to complete the Scope of Services.

The Consultant's work must comply with all applicable city and state building, environmental and public works codes and standards. Work will be implemented in compliance with the Final Environmental Document in compliance with NEPA and NDEQ guidelines including various Federal congressional acts and executive orders and guidelines, other federal and state environmental laws, and regulations and guidelines promulgated by the Federal Transit Administration.

This RFQ outlines the technical qualifications and experience required for the indefinite Delivery/Indefinite Quantity (IDIQ) contract; the scope of services to be provided by the selected Consultant and information that should be included in the submitted proposal.

The successful Applicant shall be awarded a Contract for the Professional Services which may be conditioned upon approval by the Federal Transit Authority (FTA.) The award of a Contract shall not be final and binding upon the Authority until all necessary approvals have been obtained and all preliminary conditions of the Contract Documents have been fulfilled. It is the intent of the Authority to award the Contract within 60 days following the Due Date to the Applicant submitting the Proposal that conforms in all material respects to this

RFQ and that under the totality of the circumstances is considered most advantageous to the Authority. The Contract will be awarded by resolution of the Board of Directors for the Authority.

## BACKGROUND

Metro was established in 1972 and currently provides bus and paratransit service in the cities of Omaha, Bellevue, Ralston, Papillion and La Vista in Nebraska and Council Bluffs in Iowa. The service area population is approximately 561,920 service.

Metro directly operates 21 local and 7 express bus routes, with a fleet of 122 federally funded vehicles. A fleet of 28 vehicles provides complementary ADA paratransit service during the same hours of operation and service area. Bus service is available weekdays from approximately 4:30 am to 12:30 am, Saturdays from approximately 5 am to 12 am and Sundays from approximately 6 am to 9:30 pm. The fixed route fare is \$1.25, with a half fare of \$0.60 available to seniors, individuals with disabilities, and Medicare cardholders. A transfer is available for \$0.25. ADA Complementary paratransit fares are \$2.50 per ride.

The administrative and maintenance facility is located at 2222 Cuming Street in Omaha. Metro's four transit centers include North Omaha Transit Center, Westroads Transit Center, Benson Park Transit Center, and Metro College Transit Center. Metro's National Transit Database (NTD) Report for FY 15 provided the following financial and operating statistics for its fixed-route and paratransit service:

	Fixed Route Service	Paratransit Service
Passenger trips	3,780,468	736,623
Revenue miles	3,979,914	800,977
Operating expenses	\$24,310,595	\$2,844,743

During the last several years Metro completed a renovation of the North Omaha Transit Center, replacement of underground fuel tanks, facility improvements including air handling systems, rolling stock procurements, and engineering and design studies.

Other projects in planning include a Bus Rapid Transit (BRT) project between the Westroads Transit Center and downtown Omaha funded by TIGER. Metro is also completing studies on a potential streetcar project. Two new facilities for passenger amenities and connections are planned for near Creighton University, near the Crossroads redevelopment area at 72<sup>nd</sup> and Dodge Streets.

## GENERAL INFORMATION FOR PROPOSERS

Notification of Federal Participation: This project is financed in part by the FTA. Accordingly, federal requirements apply to this contract. In the event these requirements are revised during the performance of this contract, the proposer shall incorporate those revised provisions mandated by the FTA.

Neither the Consultant, nor any party contracting with the Consultant, shall be deemed to be an agent or employee of the Metro. The Consultant is and shall be an independent Consultant, and the legal relationship of any person performing services for the Consultant shall be one solely between said parties.

Consultant shall not subcontract any services to be performed by it under this Agreement without the prior written approval of Metro, except for service firms engaged in drawing, production, typing and printing. Consultant shall submit all subcontractor contracts to Metro for review and approval. Consultant shall be solely responsible for reimbursing any sub-consultants and Metro shall have no obligation to them.

**Ownership of Work:** All reports, designs, drawings, plans, specifications, schedules and other materials prepared, or in the process of being prepared, for the services to be performed by the proposer for Metro shall be and are the property of Metro. Metro shall be entitled to access during the progress of this work. In the event the work, subject to this agreement, is not completed, for any reason whatsoever, all materials generated under this agreement will be delivered to Metro, as Metro directs.

Any and all rights, title, and interest (including without limitation copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to Metro. The Consultant agrees to execute any additional documents which may be necessary to evidence such assignment. The Consultant represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under, and services provided under, this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

Consultant shall indemnify, defend and hold harmless Metro to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages or expenses (including attorneys' fees and related costs, whether or not litigation has commenced), whether direct or indirect, arising out of, relating to, or in connection with any claim or allegation that the ownership, possession, maintenance, modification, or any other use of any software, equipment, devices, processes, or other materials provided by Consultant directly or indirectly, (including without limitation through any sub-consultant or supplier) infringe or violate the patent, copyright, trade-secret, or other intellectual-property or proprietary rights of any third party. In case any such software, materials, equipment, devices, processes, or other materials are held to constitute an infringement and their use enjoined, Consultant, at Consultant's sole cost and expense, shall: (a) secure for Metro the right to continue using the materials, equipment, devices or processes by suspension of the injunction or by procuring a royalty-free license, or licenses, (b) replace such materials, equipment, devices, or processes with non-infringing materials, equipment, devices, or processes, or (c) modify them so that they become non-infringing or remove the enjoined materials, equipment, devices or processes and refund the sums paid for them without prejudice to any other rights of Metro. The option of (a), (b), or (c) in the preceding sentence must be selected in consultation with Metro and with Metro's consent, which shall not be unreasonably withheld. The option may not entail an unreasonable or excessive amount of time or cause undue disruption to Metro's operations.

Before submitting its Proposal, all potential Applicants should become familiar with all aspects of this RFQ, including any Laws governing the Work, the Contract or the Project. Background documents regarding previous work and planning may be found at: [www.ometro.com](http://www.ometro.com). Applicants should review all documents to ensure conformance with preliminary design and engineering and avoid duplication of previously completed work.

This RFQ shall consist of those documents designated below together with any Addenda that may be issued by the Authority prior to the Due Date. Applicants are responsible for making certain that all

materials have been obtained. The following Exhibits must be signed and returned with your submission.

- Exhibit "A" to the General Conditions, Federal Clauses for Procurement of Professional Services
- Exhibit "B" to the General Conditions, Debarment/Suspension - Prime
- Exhibit "C" to the General Conditions, Debarment/Suspension - Sub
- Exhibit "D" to the General Conditions, Affidavit of Non-Collusion – Prime
- Exhibit "E" to the General Conditions, Lobbying Certification
- Exhibit "F" Request for Clarification
- Exhibit "G" Acknowledgement of Addendum
- Exhibit "H" Bidders List Form
- Exhibit "I" Conflict of Interest Disclosure

## GENERAL CONDITIONS

### 1.0 DEFINITIONS.

Whenever used in this RFQ, the following capitalized and other terms shall have the meaning ascribed to them set out below, and as may otherwise be defined in this RFQ.

ADDENDUM	A written amendment or modification to the RFQ, issued by the Authority in conformity with the RFQ.
APPLICANT	Person who submits a Proposal. The term "Bidder" or "Offeror" is occasionally used in the Laws or Contract Documents to mean the Applicant or the Contractor. Such term shall therefore be construed to apply to Applicant whenever the context shall require.
AUTHORITY	Transit Authority of the Authority of the City of Omaha d/b/a/ Metro.
CONTRACT	The agreement between the Contractor and the Authority to perform the Work for the Project. The Contract shall consist only of the Contract Documents, including: their respective covenants, terms, conditions and other provisions; and any exhibits, schedules, drawings, specifications or other instruments or documents referenced in, by, or otherwise incorporated into, any Contract Documents. To the extent there exists any inconsistency among the Contract Documents, that which is deemed by the Authority to be most advantageous shall apply. The performance of the Contractor, including that of its Subcontractors, shall conform to, and shall be consistent with, the Contract. The Contract shall continue until the completion of the performance of the Work, unless earlier terminated as provided in Section 1.4.
CONTRACT DOCUMENTS	The Contract Documents shall mean and include: the RFQ; the Proposal/Bid, including any permitted or negotiated modifications/ amendments thereto; the executed Pricing Schedule; any executed Acknowledgement of Addenda; any Request for Clarification and Approved Equal; any executed Certification required by the RFQ; the Contract award; all bonds and policies or evidence of insurance; any separate written agreements between the Authority and the Contractor related to the Project or the Work, including, if required, a duly executed agreement; and any other material or document designated by the Authority as a Contract Document.
CONTRACTOR	The Applicant receiving the award of a Contract. Unless otherwise required by this Contract, references to the

Contractor shall include Contractor and Subcontractors, including its and their employees, agents, successors and assigns. The term "Bidder" or "Offeror" is occasionally used in the Laws or Contract Documents to mean the Applicant or the Contractor. Such term shall therefore be construed to apply to Contractor whenever the context shall require. Similarly, the term "installer", "third party contractor", "lower tier participant" shall therefore be construed to apply to Contractor whenever the context shall require.

DAYS	Days shall mean business days unless otherwise expressly provided.
D.O.T.	Department of Transportation.
F.T.A.	Federal Transit Administration.
INCLUDING	The term "including" shall mean "including without limitation", whether or not expressly so provided.
LAW	The laws of the State of Nebraska applicable to the Project and the Work, any local ordinances applicable to the same and, except to the extent prohibited by the laws of the State of Nebraska, any existing or future requirement, provision, condition of any federal law, rule, regulation, order, policy, directive, or procedure governing the Project or applicable to the Work, including those federal requirements included, identified or referenced in Exhibit "A" to this RFQ. Contractor shall at its own expense secure any and all licenses, permits or certificates that may be required by any Law for the performance of the Work. The Contractor shall observe and comply with all Law in its performance under the Contract and shall assure the same from its Subcontractors. In the event the Laws should be amended, repealed or replaced, or otherwise become applicable, Contractor shall promptly conform its performance and that of its Subcontractors to comply, and the Contract shall continue in full force and effect.
MASTER AGREEMENT	Agreement between the FTA and the Authority.
NDOR	The Nebraska Department of Roads
OPENING DATE	The date designated by Section 1.1.1 of this RFQ for the receipt of Proposals, as extended by the Grant Administrator by Addendum.
PARTY(IES)	The Authority or the Contractor individually (or collectively).



PERSON	“Person” shall mean any individual or entity, including any corporation, partnership, sole proprietor or LLC.
PROJECT NO.	Authority Project No. <b>16-16</b> . All written correspondence from a Party in connection with the Contract Documents, the Contract or the Work shall reference the Specification No. and the Project No.
PROJECT COMPLETION DATE	The date designated in the Contract Documents for completion of the Work, as extended in conformity with the Contract Documents.
PROPOSAL	A timely written response to this RFQ that complies in all material respects to this RFQ, also referred to as the “Statement of Qualifications”. The Proposal shall include any forms, Certifications or other materials required by the RFQ. The term "Bid" or "Offer" is occasionally used in the Laws or Contract Documents to mean the Proposal and shall be so construed whenever the context shall require.
RFQ	This Request for Qualifications for Specification No. <b>16-16</b> issued <b>March 1, 2017</b> , consisting of those items identified in this document, together with any Addendum.
RECIPIENT	The Authority.
SPECIFICATION NO.	Authority Specification No. <b>16-16</b> . All correspondence from a Party in connection with the Contract Documents, the Contract or the Work shall reference the Specification No. and the Project No.
SPECIFICATIONS	The Project/ Scope of Work Specifications as written in this RFQ.
SUBCONTRACTOR	Any Person with whom the Contractor subcontracts any Work, including any Person from whom Contractor may purchase any equipment, materials or services. All agreements between Contractor and Subcontractors shall be in writing, conform to the Laws and shall be assignable, without penalty or modification, to the Authority upon request in the event of termination of the Contract.
SUB-RECIPIENT	A Person to whom the recipient distributes federal funds.
WORK	The work and performance required by the Contract, including all tangible and intangible property (including, unless otherwise expressly provided in Contract Documents or the Specifications, all designs, drawings, photographs, data, specifications,

computer records and software, lists, manuals, reports, research, source codes, all related information, intellectual/proprietary property rights therein and thereto), all licenses, purchases, construction, installation, labor, materials, equipment and services contemplated, made, prepared, developed, provided or to be made, prepared, developed, provided by the Contractor, including its Subcontractors. Unless otherwise provided in Contract Documents or the Specifications, all Work, including partially completed Work, shall be the property of the Authority, subject to the rights of the United States therein and thereto.

## 1.1 RESPONSES TO RFQ

1.1.1 Responsive Proposals.

- (a) The Authority will evaluate only those Proposals which are fully responsive to this RFQ and which are received by the Authority on or before March 31, 2017 at 4:00 PM CST, or as extended by Addendum ("Opening Date"). Each Applicant shall submit
- One electronic copy (in a pdf format)
  - Seven (7) hard copies

of its Proposal, to the Authority, addressed as follows:

Metro – 16-16 A&E IDIQ  
2222 Cuming Street  
Omaha, Nebraska 68102  
Attn: Grant Administrator

All Submitted Proposals become the property of the Authority. **Facsimile or Electronic submissions of proposals will not be accepted.**

- (b) The Authority reserves the right in its discretion: to amend the RFQ at any time prior to the Opening Date by Addendum; to reject all Proposals; to waive minor irregularities contained in any Proposal; to rely upon any information obtained through its own investigation of the Applicant or its Proposal or that of any department, agency or any other appropriate governmental entity; and to withdraw the RFQ at any time, including after the Opening Date, without the award of a Contract.
- (c) INTENTIONALLY LEFT BLANK
- (d) Proposals may be withdrawn or modified by Applicant upon written request referencing the appropriate Project and Specification numbers addressed to the Grant Administrator prior to the Opening Date. Except as required by Section 1.2.4 of this RFQ, modifications will be accepted and considered only if received prior to the Opening Date. All modifications shall clearly identify how and to what extent the Proposal is being modified. Where appropriate, the required number of copies of substitute forms, documentation and other materials shall be included with the modification. Proposals that are withdrawn shall be returned unopened by the Authority.
- (e) Notwithstanding Section 1.1.1(d) of this RFQ, the Authority may request additional or clarifying information from an Applicant at any time. A detailed cost proposal may be requested. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal to determine fair and reasonable price. All responses from Applicant shall be in writing.
- (f) INTENTIONALLY LEFT BLANK

- (g) Subject to the negotiation process contemplated by Section 1.1.2 of the RFQ, the Proposal shall confirm that all material provisions of the Proposal, including prices, shall remain firm through the Project Completion Date, unless otherwise expressly permitted by the Specifications. The Authority is exempt from payment of federal excise and transportation tax, and Nebraska Sales Tax. These taxes shall not be included in the price for any Proposal.
- (h) INTENTIONALLY LEFT BLANK
- (i) No Proposal shall be considered compliant or responsive unless it materially complies with the RFQ in its entirety, completely and accurately responds to all parts of the RFQ and includes all information requested. Without limitation to the generality of the preceding sentence or any other provision of this RFQ, Proposals may be found not to be compliant or responsive if Applicant:
- Misrepresents any material fact.
  - Attempts to evade any material provision or requirement of this RFQ.
  - Fails to indicate in numbers and words, any amounts required to be identified.
  - Fails to timely submit a duly authorized and executed Proposal.
  - Submits a conditional Proposal, or a Proposal that takes exception to the Specifications, the RFQ or any other Contract Document.
  - Fails to adequately demonstrate its ability to perform or timely perform the Project and the Work in compliance with the Contract.
  - Fails to fully execute or complete any forms, schedules or exhibits required by this RFQ to be executed or completed.
  - Otherwise fails to comply with any material provision or condition of this RFQ.
- (j) Copies of responsive competing Proposals shall not be made available to Applicants until 60 days after board approval. Applicants requesting copies of the Proposals shall do so in writing accompanied by a certified or cashier's check in the amount of \$25.00. Applicants should be aware that the Authority is a public body to which the public records laws of the State of Nebraska may apply. The Authority shall take reasonable steps to notify the Person designated by the Applicant in the Proposal of any request by any Applicant or other Person to obtain copies of, or to otherwise review information, clearly identified in the Proposal as "Confidential Information". The Authority expressly disclaims any further obligation or undertaking to otherwise protect the confidential nature of any information contained in any Proposal.

- 1.1.2 **Preliminary/Other Conferences.** A Pre-Submission Conference shall be held at Metro's administrative facility, 2222 Cuming Street, Omaha, NE, at 9:00 am Central Standard time, Wednesday March 15, 2017. This solicitation is intended to be a competitive proposal procurement. Following the Opening Date, the Authority may hold a conference with some or all Applicants for the purpose of facilitating the Authority's review of the Applicant's Proposal, including further negotiation of the price or other material provisions of the Proposal to the extent permitted by the Laws. The appropriate Applicant will be notified in writing of the time and date of any such conference. Applicant's failure to

attend any scheduled conference may disqualify the Applicant and its Proposal from further consideration.

1.1.3 Requests/Specified Parts and "Approved Equals".

- (a) INTENTIONALLY LEFT BLANK
- (b) INTENTIONALLY LEFT BLANK
- (c) INTENTIONALLY LEFT BLANK
- (d) The Authority shall not be responsible should any such Person fail to receive such Addendum.
- (e) The Authority shall not be obligated to extend the Opening Date in the event of an approved request for clarification, substitutes or proposed equal, but may do so in its absolute discretion.
- (f) The Authority may reject any request for a substitute or qualified equal made by any Contractor following the award of the Contract, in its absolute discretion.

1.1.4 Protests.

- (a) Protests made in connection with this RFQ, including the protest of a denial or approval of any request made pursuant to Section 1.1.3 shall be made in writing received by the Grant Administrator by no later than ten (10) days before the Opening Date. Protests shall be limited to those allowable by, and made in compliance with, the procedures established by the Authority, copies of which may be obtained from the Executive Director of the Authority upon written request. All protests shall be concise, direct and sufficient to permit the Authority to determine the full and complete basis therefor, fully supported by all current, relevant objective information, documentation or support considered necessary by the Applicant that is completely accurate in all material respects. The Authority shall decide the protest by no later than five (5) days prior to the Opening Date. Procedures for appeals from any such decision are set forth in the Authority's protest procedures.
- (b) Appeals from the award of a Contract must be made in writing received by the Executive Director of the Authority not later than ten (10) days after the earlier of the award of the Contract or the announced intention of the award of the Contract. Appeals shall be limited to those allowable by, and made in compliance with, the procedures established by the Authority, copies of which may be obtained from the Executive Director of the Authority. All appeals shall be concise, direct and sufficient to permit the Authority to determine the full and complete basis therefor, fully supported by all current, relevant objective information, documentation or support considered necessary by the Applicant that is completely accurate in all material respects. Procedures for appeals from any such decision are set forth in the Authority's protest procedures.

- (c) The filing or approval of any protest or appeal may result in the extension of the Opening Date, the issuance of an Addendum, the withdrawal of the RFQ or the reconsideration of any award of a Contract, in the sole discretion of the Authority.
- (d) In the event of an appeal from the award of a Contract, the award shall not be considered final or binding upon the Authority unless the award is thereafter confirmed in writing by the Executive Director.
- (e) For information purposes only, each Applicant should understand that the FTA will not accept any protest or appeal from any decision of the Authority unless the Authority fails to have any written protest procedures, the Authority fails to follow such procedures or the Authority fails to review a timely protest. An Applicant must exhaust all administrative remedies with the Authority before pursuing a protest with FTA. An appeal to FTA must be received by the appropriate FTA regional or Headquarters Office within five (5) working days of the date the Applicant knew or should have known of the violation.

## 1.2 APPLICANT'S IDENTIFICATION

- 1.2.1 Responsible Individuals. Whenever the identification of any individual is required by this RFQ, Applicant shall provide full and complete identification, including the individual's full name and current business address.
- 1.2.2 Other Responsible Persons. Whenever the identification of any Person, other than an individual, is required by this RFQ, the Applicant shall provide full and complete identification, including the Person's full name and current business address.
- 1.2.3 INTENTIONALLY LEFT BLANK
- 1.2.4 Continued Identity. Applicant shall, in the form of written supplements to its Proposal addressed to the Grant Administrator, keep continuously current through the award of the Contract all information provided pursuant to Section 1.2 of this RFQ, including Sections 1.2.1 and 1.2.2.
- 1.2.5 Designated Recipient of Notice. Applicant shall designate a Person to receive copies of any correspondence, approvals or notice contemplated by the Contract from the Authority. Identification shall include a telephone number, telefax number, address, e-mail address, and any other information appropriate to enable the Authority to provide any notice.
- 1.2.6 Designated Authorized Representative. Applicant shall identify the individual(s) who shall have authority to bind the Applicant/Contractor in any matter related to the Proposal, Contract or Work.

## 1.3 INSURANCE

It is strongly recommended that Consultants confer with their respective insurance carriers and/or brokers to determine in advance of proposal submission the availability of insurance coverage as required under this solicitation. Failure to comply with the insurance requirements may result in disqualification from award of the contract. Compliance with insurance requirements hereunder is considered a material term of the contract.

Consultant shall procure and maintain for the period set forth below insurance against claims for injuries to persons or damage to property or for professional errors and omissions which may arise from or in connection with the performance of the work hereunder by the Consultant, Consultant's agents, representatives, employees or sub-consultants. Metro reserves the right to alter, amend, increase or otherwise modify the insurance requirements stated herein.

- 1.3.1 Workers Compensation Insurance as required by the State of Nebraska and Employer's liability insurance. Insurer will agree to waive all subrogation rights against Metro, its officers, officials and employees for losses arising from the work performed by the consultant.
- 1.3.2 Professional Errors and Omissions Insurance appropriate for the profession and a provision for Errors and Omissions Insurance for any sub-consultants. Minimum of \$1,000,000 coverage. Coverage will last 5 years post project completion.
- 1.3.3 General liability insurance of \$1,00,000 per occurrence, \$2,00,000 aggregate.
- 1.3.4 Automotive Liability of \$1,00,000 per accident for bodily injury and property damage.
- 1.3.5 Insurance will be placed with Nebraska admitted insurers having an AM Best & Co rating of A-VII

#### 1.4 TERMINATION

##### 1.4.1 Termination for Convenience by Authority.

- (a) Any Contract, or any part thereof, awarded by the Authority pursuant to this RFQ shall be subject to termination at any time by the Authority upon notice in writing to be effective as of the date of receipt of such notice. Upon receipt of such notice, Contractor shall, unless otherwise specified in the notice, immediately stop all Work and, to the extent permitted under each applicable subcontract or agreement, give prompt written notice to Subcontractors to cease all related Work. In the event this Agreement is terminated by application of this Section 1.4., Contractor shall have no claim, right, remedy or entitlement for damages, compensation or equitable relief for early termination other than as provided in Section 1.4.1(b). Contractor waives any other right, remedy or recourse of any nature whatsoever it may have now or at any other time against the Authority and the FTA.
- (b) In the event of termination for convenience pursuant to Section 1.4.1, Authority shall be responsible to pay the Contractor only for all authorized Work

performed up to the date of termination and conforming to the Contract, without allocation of profit for unperformed, remaining or incomplete Work. In no event shall the aggregate charges to be paid by Authority pursuant to the preceding sentence exceed resulting from the percentage of the completed Work to that remaining multiplied by the aggregate Contract price. In the event of such termination, Contractor shall have no recourse against Authority except as earlier stated in this Section 1.4.1(b) and as follows: Contractor shall be entitled to receive reimbursement from Authority an amount equal to the sum of: (i) the reasonable out-of-pocket costs actually and necessarily incurred by Contractor in withdrawing its equipment and personnel from the Work and otherwise demobilizing; (ii) the actual, reasonable and necessary costs reasonably incurred by Contractor in terminating those contracts, not assumed by Authority, for Subcontractors; (iii) provided, however, Contractor shall not be paid for any Work after receipt of such notice or for any costs incurred by Subcontractors after receipt of Customer's termination notice, or for Work which Contractor could reasonably have avoided Contractor. Contractor shall document any cost claimed by it to Authority's reasonable satisfaction and shall supply Authority with copies of all invoices for Subcontractors covering the amounts claimed as costs for such purpose. Contractor shall submit an invoice to Authority for the amount of reimbursement claimed by Contractor with all supporting information and requisite documents. Unless disputed in good faith by the Authority, Customer shall be paid such amounts within thirty (30) business days after Customer delivers all Work, completed or not completed, in its then current form, free and clear of all liens and assigns to Authority together with any subcontracts, duly assigned, that Authority is willing to assume.

- 1.4.2 Suspension by Authority. Upon seven (7) days' prior notice, the Authority may suspend, delay, or interrupt for up to six (6) months the Work or the Project for the convenience of the Authority. Nothing in this Section 1.4.2 shall be construed to apply to any such suspension, delay or interruption caused by an event of force majeure (as defined by the Contract Documents). In the event such suspension, delay, or interruption causes a change in Contractor's cost or time required for performance of the Work, the Parties will agree on an equitable adjustment through a written amendment to the Contract to be signed by Authority and Contractor. A suspension may be withdrawn by Authority upon five (5) days' written notice to Contractor. Any suspension, delay or interruption that exceeds six (6) months shall be deemed to be a termination by Authority and Contractor shall be compensated by Authority as if this were a termination for convenience under Section 1.4.1.
- 1.4.3 Termination for Default by Authority. Without prejudice to any other remedy or recourse, including its right to seek damages, the Authority may:
- (a) Terminate the Contract effective immediately upon Contractor's receipt of written notice from Authority specifying any of the following events:
    - (i) Insolvency of Contractor.



- (ii) The filing of a meritorious petition of bankruptcy by or against Contractor or the filing of any petition by Contractor seeking protection under Chapters 7, 11 or 13 of the United States Bankruptcy Code.
  - (iii) The conviction of Contractor of a felony in connection with the Work.
  - (iv) Except as provided in Section 1.4.3(b)(i), the failure to materially comply with any of the Laws.
  - (v) Any attempt to evade any material provision of the Contract or to practice any fraud or deceit upon Authority.
  - (vi) The failure of Contractor or any of its Subcontractor's to fully comply with the lawful directives or cooperate with requests of Authority inspectors or other officials administering or monitoring Work, including any federal, state or other public authority.
  - (vii) The failure to provide any required bond within ten (10) days of notice of the award of the Contract.
  - (viii) Any material misrepresentation by Contractor made at any time.
  - (ix) Contractor improperly assigns or attempts to assign the Contract or any of the Work.
  - (x) The failure to properly maintain, provide or permit Authority access to any books, records, bank accounts or documentation related to the Contract.
- (b) Terminate the Contract, if any of the following (which shall also constitute a material default or breach of the Contract) is not cured to the satisfaction of the Authority within the earlier of thirty (30) days or the time prescribed therefor, in either event from the receipt of written notice from the Authority specifying such breach or default:
- (i) Contractor fails to conform operations which are in violation of the Laws because of a change in the Laws within 30 days following the effective date of such change.
  - (ii) The failure to promptly pay any sums due to Authority within 5 days of notice.
  - (iii) Contractor refuses or fails to timely commence or perform the Work.
  - (iv) Contractor refuses or fails to supply enough properly skilled workers, or proper materials or Subcontractors to timely perform the Work.
  - (v) Contractor fails to comply promptly with rejection notices or notices to correct defects in the Work.
  - (vi) Contractor causes or permits any repudiation, lapse or cancellation of performance or other security required by Section 1.1.5.
  - (vii) Any other materially breach or default of any covenant, term, condition or provision the Contract, whether or not specified in this Section 1.4.3.

Termination under this Section 1.4.3(b) shall be effective as of the expiration of the period so specified without the necessity of further action by the Authority.

- 1.4.4 Wrongful Termination by Authority. In the event the Authority shall wrongfully terminate the Contract, unless otherwise agreed by the Parties in writing, to re-instate or otherwise continue the Contract in accordance with its terms, the Authority's termination shall be construed to be a termination for convenience and Section 1.4.1 shall apply.

- 1.4.5 Future Breach Not Waived. No waiver by Authority of any breach or default by Contractor under the Contract shall operate or be construed to operate as a waiver of any other existing or future breach or default, whether of a similar or different character. Failure of the Authority to insist upon strict performance of any provision under this Agreement shall not constitute a waiver of, or estoppel against asserting the right to require strict performance of any other provision of this Agreement or the same provision in the future, nor shall a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a later default or breach. No waiver by any Person of any default by any Party in the performance of any provision, condition or requirement herein shall be deemed to be a waiver of, or in any manner release of, said Party from performance of any other provision, condition or requirement herein; nor shall such waiver be deemed to be a waiver of, or in any manner a release of, said Party from future performance of the same provision, condition or requirement. Any delay or omission of any Party to exercise any right hereunder shall not impair the exercise of any such right, or any like right, accruing to it thereafter. No waiver of a right created by this Agreement by one or more Parties shall constitute a waiver of such right by the other Parties except as may otherwise be required by law with respect to Persons not parties hereto. The failure of one or more Parties to perform its or their obligations hereunder shall not release the other Parties from the performance of such obligations.
- 1.4.6 Contractor's Right to Terminate. Contractor shall not be entitled to terminate the Contract for any reason except as provided in this Section 1.4.6. In the event that the Authority fails to timely pay to Contractor any undisputed amounts due pursuant to the terms of the Contract, Authority shall be in default under this Contract and Authority shall be allowed thirty (30) days from receipt of a written notice of such default from Contractor in which to cure such default, after which Seller may immediately terminate this Contract by written notice to Buyer. Any amount disputed by Authority to be due under this Contract must be disputed in good faith.
- 1.4.7 Waiver of Contractor's Other Remedies. Except as provided in Section 1.4.3(b), Contractor waives any claim or other right it may have to proceed in law or equity against Authority or to otherwise obtain any money or any damages under or in respect to this Contract for any wrongful or other termination or for any default or breach in the keeping or performance of any warranty, covenant or obligation under or in respect to this Contract by Authority or for any other act, operation or omission of Authority in respect to the Contract, under any theory whatsoever.
- 1.4.8 Dispute. Continuing Performance. In the event of any dispute between Authority and Contractor with respect to the interpretation of this Contract, any required payment under or the performance required by this Contract, including any dispute which may result in a claim, (a "Dispute"), the aggrieved Party shall notify the other in writing of the Dispute then existing (the "Dispute Notice"). In order for a Party to proceed under this Section, the Dispute Notice must specifically state that the aggrieved Party is invoking the Dispute procedure of this Section 1.4.8. The Parties shall then make a good faith attempt to resolve the Dispute, first through direct discussions between their respective designated representatives. In the event the designated representatives are unable to reach agreement then upon the written request of either Party, each of the Parties will

appoint a designated executive whose task it will be to meet for the purpose of endeavoring to resolve such dispute. The designated executives shall meet in Omaha Nebraska as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. Such executives will discuss the problem and/or negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding relating thereto. No action for the resolution of such dispute outside of these procedures shall be taken by either Party until one of the designated executives concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other designated executive in writing either party in its sole discretion may invoke litigation, provided that failure to invoke litigation shall not be a waiver of any such Dispute except as otherwise provided in the Contract. During any mediation or litigation which arises out of a Dispute, all parties will continue to perform pursuant to the Contract, without prejudice to the express rights of Authority or Contractor set forth in this Section 1.4 to terminate the Contract. In addition to the specific rights of termination and suspension as set forth in Section 1.4, Authority and Contractor shall have also available the remedy of specific performance to enforce this Section 1.4.8, which may be raised as a defense in any action commenced prior to the Parties' compliance with this Section 1.4.8.

## 1.5 WARRANTIES OF THE PARTIES

1.5.1 Warranties of Applicant/Contractor. In addition to those representations and warranties set forth in the Specifications, or otherwise made in or required by the Contract, for purposes of its Proposal and the Contract, if awarded to Applicant, Applicant hereby warrants and represents that:

- (a) It is duly organized and existing under and by virtue of the laws of the state of its organization and has the power and authority to own its properties and to carry on the business as presently conducted and as represented and to do business in the State of Nebraska.
- (b) It has all requisite corporate power and authority to execute, deliver and perform the Proposal and Contract; the Proposal and the Contract have been duly authorized, executed and delivered, and as such, constitute its valid and binding obligation, enforceable in accordance with its terms and conditions.
- (c) Performance of the Contract will not violate, or be in conflict with, or result in a material breach of, or constitute a default under, any material agreement, order, judgment, or decree to which it is a party or by which it is bound.
- (d) It has examined or is familiar with all current Laws and shall undertake its performance under the Contract in conformity with the same.
- (e) The representations made in the Contract, including the Certifications made in its Proposal are true, accurate and complete in all respects.

- (f) To the best of its knowledge, after due and diligent inquiry, no elected official of the Authority of Omaha, and no member of the Board of Directors of the Authority nor any the Authority's officers or employees is employed by, or has a financial interest, direct or indirect, in the Contract, the Applicant, the Contractor or any Subcontractors.
- (g) It shall execute and deliver all such other and additional instruments and documents and to do such other acts and things as may be reasonably necessary more fully to effectuate the Work and the Contract. Without limitation to any of the foregoing, all warranties required by the Contract or otherwise applicable to the Work shall be assignable to the Authority upon the completion of the Work or any termination of the Contract.
- (h) In its performance of the Work, Contractor, including its Subcontractors shall use the standard of professional ethics and the degree of skill, care and diligence normally employed by professionals and trades performing the same or similar Work (collectively, the "Standard"). Except as expressly limited by the Specifications or executed agreements, all Work to be furnished under the Contract shall be of highest quality and new, free from faults and defects, suitable for the Authority's purposes and in conformity with the Contract. Any other Work shall be considered defective. Without prejudice to any other recourse available to the Authority, Contractor will re-perform and otherwise remedy any defective Work, including any Work not meeting the Standard without additional compensation.

1.5.2 Warranties of Authority. The Authority makes no representation of any nature to the Applicant, other than that the information provided in this RFQ is true and accurate to the best of its knowledge at the time of its writing.

## 1.6 MISCELLANEOUS MATTERS

1.6.1 Severability. The invalidity or unenforceability of any provision of the Contract shall not affect the validity or enforceability of any other provision of the Contract, nor shall the invalidity or unenforceability of a portion of any provision of the Contract affect the validity and enforceability of the balance of such provision. All other provisions and parts of provisions shall remain in full force and effect, provided however, if in the sole opinion of Authority, the removal or inoperative effect of any such provision or part of provision so declared invalid or unenforceable shall materially affect Authority's rights under the Contract, the Authority may terminate the Contract as set forth in Section 1.4.1(a).

1.6.2 Time is of Essence in this Agreement. Whenever the Contract shall set forth any time for any action to be performed by or on behalf of the Contractor, time shall be deemed of the essence and as such shall be deemed a material provision of the Contract.

1.6.3 Complete Agreement. The Contract constitutes the entire agreement between the Authority and Contractor and supersedes any other agreement or understanding between them. Should the Authority determine that any material provision of the Contract is adversely affected by the subsequent action of the state or federal

government (as determined by the Authority in its sole and absolute discretion), the Authority shall have the right to modify the provisions of the Contract to such extent as may be necessary to carry out its original full intent and purpose, otherwise the Contract shall be not be amended or otherwise modified except as required by changes in Law, Sections 1.6.1 or by written mutual agreement of the Parties. All modifications shall be effected by Authority only as permitted by its internal control provisions, which shall be made available from the Grant Administrator. Any amendments or modifications to this Agreement shall be binding upon Contractor's guarantor or surety without notice.

- 1.6.4 Governing Law. The Contract shall be governed by and construed in accordance with the Laws.
- 1.6.5 Venue. With respect to any claim of any Person arising out of the Contract (i) each Party irrevocably submits to the exclusive jurisdiction of the federal courts located in Douglas County in the State of Nebraska (unless such federal courts lack subject matter jurisdiction, in which case each Party irrevocably submits to the exclusive jurisdiction of the State courts located in Douglas County in the State of Nebraska), and (ii) each Party irrevocably waives any objection which it may have at any time to the venue of any suit, action or proceeding arising out of or relating to the Contract brought in any such courts and irrevocably waives any claim that such suit, action or proceeding is brought in an inconvenient forum, and further irrevocably waives the right to object, with respect to such claim, suit or proceeding brought in any such court, that such court does not have jurisdiction over such Party.
- 1.6.6 Assignment. Neither the Contract nor any of Contractor's rights, privileges, liabilities or obligations under the Contract may be assigned, subcontracted (other than to Subcontractors identified in the Proposal) or transferred by Contractor without the prior written consent of the Authority, which may be withheld in its discretion.
- 1.6.7 Survival. All waivers, representations, warranties, indemnities, limitations and remedies provided for in the Contract shall survive the expiration or termination of the Contract.
- 1.6.8 Notice. Unless otherwise expressly provided in the Contract Documents, any request, protest, notice, response, or approval, required or contemplated by the RFQ or the Contract, shall be considered sufficient only if made in writing and hand-delivered or sent by telephone facsimile or certified or registered mail, postage prepaid to the Person designated below, addressed as follows:
- (a) To the Authority:  
Grant Administrator: 16-16 A&E  
2222 Cuming Street  
Omaha, NE 68102
  - (b) To the Contractor:  
That Person identified in the Proposal for such purposes.

Either party may designate a different Person or address by providing notice of the change to the other.

- 1.6.9 Requests/Approvals/Consents. Whether or not otherwise so specified in the Contract, all requests and any required consents, notices and approvals shall not be valid unless made in writing.
- 1.6.10 Headings. The descriptive headings of the Contract are used for convenience only and shall not be deemed to affect the meaning or construction of any such provision.
- 1.6.11 Relationship of Parties. Nothing in the Contract shall be deemed or construed to create a joint venture, agency or any other relationship by or between the Authority and Contractor other than that of an independent contractor.
- 1.6.12 Indemnity. For purposes of this Section 1.6.12, “damages” shall mean any and all damages, loss or injury of whatsoever nature, including all claims, demands, suits, proceedings, judgments, recoveries (including any payments by Authority in respect to the foregoing pursuant to a court judgment or good faith settlement by Authority) any fine, penalty, liability, loss, any direct, special, incidental or consequential damages, any damage or injury to Person (including death or bodily injury) or property and causes of action made, asserted, sought or obtained by any private or public third Person from or against, or otherwise sustained by, Authority (including Authority's contractors, employees, licensees, officers, elected or appointed officials and all sums reasonably expended by the Authority for attorney fees in asserting or defending against such damages) whether under theories of breach of contract, tort, negligence, or otherwise. Contractor shall bear sole responsibility and be liable for, and shall hold the Authority harmless and indemnify it from and against, all damages resulting or arising from or out of or in connection with (a) Contractor's operations, including as a result of any act, error or omission of (b) Contractor's and its Subcontractor's (including their respective agents, employees or assigns), performance, non-performance or wrongful performance of or under the Contract or undertaken or made pursuant to the authority of the Contract, (c) any misrepresentation made by Contractor in the Contract Documents, and (d) the breach or default of any warranty. The Authority shall have the right to defend itself (or join in the defense at the cost of Contractor) from and against such liabilities and damages, unless Contractor fails to promptly or competently undertake defense on behalf of the Authority as required.
- 1.6.13 Contractor's Books and Records. Contractor shall maintain complete and accurate accounting records in accordance with generally accepted accounting practices in connection with all matters related to the Contract and the Work, including to substantiate charges on each invoice. Contractor shall also retain all such records, books, correspondence, instructions, drawings, receipts, subcontracts, agreements, commitments, purchase orders, memoranda, and other data relating to the Contract or the Work normally maintained as part of its established business operations and as may be required by Law. Contractor will permit the Authority and its representatives, at all reasonable times and as otherwise required by the Laws, access to all offices and other facilities and to all such records, to make such reasonable inspections as they may require and will cause its officers promptly to furnish them with such financial and operating data and other information with respect to the business and properties of Contractor relating to the Contract or the Work. Contractor shall preserve all such

records for a period required by Law, but in no event less than five (5) years following final payment under the Contract.

- 1.6.14 Change in Work. Authority shall have the right to request Contractor to make reasonable changes to the Work ("Work Change"). Contractor shall consent to make such requested Work Changes, provided that Contractor is technically capable of making such Work Changes, and further provided that: (a) such Work Changes do not materially, individually, or cumulatively increase Contractor's expenses in providing the Work, or (b) if such Work Changes materially increase Contractor's expenses in providing such Work, Contractor agrees to bear the cost for the Work Changes at standard time and materials rates or a negotiated fixed price amount as determined by the Authority in accordance with the Contract Documents.
- 1.6.15 Specific Performance. of the Parties recognizes and affirms that in the event of breach by any of them of any of the provisions of this Contract, money damages alone would be inadequate and no adequate remedy at law would exist. Accordingly, each of the Parties agrees that the Authority shall have the right, in addition to any other rights and remedies existing in its favor, to enforce its rights and the obligations of the Contractor under this Contract not only by action or actions for damages, but also by an action or actions for specific performance, injunction and/or other equitable relief in order to enforce or prevent any violations of the provisions of the Contract. In accordance with the above, Contractor waives any claim or defense that the Authority has or may have an adequate remedy at law.

## 2.0 SUBMITTAL REQUIREMENTS

To be eligible for consideration one electronic (in a pdf form) and seven (7) hard copies (**maximum of thirty-three (33)** pages) of the response to the RFQ must be received by Metro no later than 4:00 PM CST, Friday March, 31, 2017. Late submittals will not be considered and will be returned to submitter unopened. No pricing or cost proposal information shall be included in the submission. The envelope package should be marked:

Metro – 16-16 A&E IDIQ  
2222 Cuming Street  
Omaha, Nebraska 68102  
Attn: Grant Administrator

## 2.1 SUBMITTAL DOCUMENTS

1. Title Page.
2. Letter of Introduction & Transmittal, including the name of a contact person within your firm. This letter should include the firm's Certificate of Authorization number issued by the Nebraska Board of Engineers and Architects, as well as the Certificate's expiration date.
3. Table of Contents.
4. A brief history of the firm and the experience of your proposed design team.
5. Firm's Approach to Transit Projects and/or similar public facilities.

6. Briefly describe the firm's experience working with federally-funded governmental agencies and their governing boards.
7. Experience in Transit Projects and/or similar public facilities.
8. Include examples of recent projects and federally-funded transit projects in particular.
9. Provide client references for all referenced projects.
10. Composition of the proposed project design team.
11. Identify in-house or consulting professionals you will employ, e.g. civil engineers, etc.
12. Individual staff and consultants' staff assignments to the project teams.
13. Include individual resumes and relevant experience for primary individuals.
14. Demonstrated evidence of the firm's ability to effectively provide full-scope design and construction administration services for a range of project types and sizes located in the Omaha metropolitan area, including small projects or project phases.
15. Other Information
16. Provide sustainable design experience, LEED certification experience, and LEED Accreditation of proposed team members.
17. Provide Intelligent Transportation Systems (ITS) experience.
18. Indicate if your firm is a Nebraska Department of Roads (NDOR) certified Disadvantaged Business Enterprise (DBE).
19. Briefly describe your firm's experience or familiarity with the utilization of NDOR certified DBE sub-contractors.
20. Include an executed Lobbying Certificate. Failure to do so may render your Submission non-responsive and ineligible for further consideration.
21. Include an executed Acknowledgement of Addenda form. Failure to do so may render your Submission non-responsive and ineligible for further consideration.

The qualifications document should **not** include a statement regarding the firm's fee structure.

**2.2 THE FOLLOWING ATTACHMENTS MUST BE SIGNED AND INCLUDED WITH SUBMISSIONS** (Exhibits are not included in the submission page total)

- 2.2.1 EXHIBIT A - ACKNOWLEDGEMENT OF FEDERAL CLAUSES
- 2.2.2 EXHIBIT B - DEBARMENT AND SUSPENSION CERTIFICATION FOR PROSPECTIVE CONTRACTOR
- 2.2.3 EXHIBIT C - DEBARMENT AND SUSPENSION CERTIFICATION (LOWER-TIER COVERED TRANSACTION)
- 2.2.4 EXHIBIT D - NON-COLLUSION AFFIDAVIT
- 2.2.5 EXHIBIT E - LOBBYING CERTIFICATION



- 2.2.6 EXHIBIT F - REQUEST FOR CLARIFICATION/SUBSTITUTION  
(Must be received by March 17, 2017 prior to 4:00 pm to be considered)
- 2.2.7 EXHIBIT G - ACKNOWLEDGEMENT OF ADDENDUM
- 2.2.8 EXHIBIT H - BIDDERS LIST FORM
- 2.2.9 EXHIBIT G - CONFLICT OF INTEREST DISCLOSURE

Please submit all questions in writing to [procurement@ometro.com](mailto:procurement@ometro.com) utilizing the form found in Exhibit F. Proposers are prohibited from initiating contact with regard to this procurement with anyone else at The FTA, Metro, the City of Omaha or Metropolitan Area Planning Agency (MAPA) except for Metro's Grant Administrator or indicated designee.

Metro will post all questions, answers and clarifications to:

<http://www.ometro.com/corporate/contracting-opportunities>.

### 3.0 EVALUATION CRITERIA

Contract will be awarded to the most-qualified team based upon the review of and scoring by a selection committee appointed by the Executive Director of Metro. The aforementioned evaluation criteria will serve as the basis for scoring, and each submission will be evaluated on its own merit. The following Matrix reflects the general weight of scoring parameters:

Criteria	Relative Weight
1. Demonstrated ability to effectively, cooperatively, and efficiently work with a similar entity.	5%
2. Demonstrated experience and expertise in designing transit facilities, or similar public projects, comparable in size, scope, and features.	10%
3. Demonstrated experience and expertise in the design of both new construction projects as well as renovation/refurbishment projects.	10%
4. Ability to coordinate and react to a diverse range of project and program requirements.	10%
5. Technical qualifications of design team.	10%
6. Demonstrated Experience and familiarity with all applicable criteria, rules, regulations and statutes related to federally funded transportation projects.	5%

7. Demonstrated Experience and expertise with public bidding requirements, particularly with respect to expediting project completion.	5%
8. Demonstrated experience in developing and managing a prompt schedule and completing projects in a timely manner.	10%
9. Demonstrated experience and expertise in providing quality assurance reviews, including interdisciplinary, architectural and engineering coordination.	5%
10. Demonstrated experience and expertise in budget development and in estimating project costs throughout the design process.	10%
11. Demonstrated experience and expertise in construction-phase activities and roles ensuring compliance with the Contract Documents.	10%
12. Reputation with existing and former clients. (Providing references).	10%
<b>TOTAL</b>	<b>100%</b>

Submissions and respondents will be evaluated by a selection committee based upon the documented ability of the respondent to satisfy the requirements of this RFQ.

#### **4.0 AWARD CRITERIA**

##### **4.1 WRITTEN PROPOSALS**

The project selection committee will review written proposal submissions described in Section 2.

##### **4.2 ORAL PRESENTATIONS**

The project selection committee may require oral presentations of those firms identified on the short list. Presentations will be held at Metro or a site designated by Metro the week of April 17, 2017.

##### **4.3 ELIGIBILITY FOR AWARD**

In order to be eligible for award, firms must be responsive and responsible as determined by Metro. Metro reserves the right to request additional information as needed from firms in order to assist with this determination.

#### 4.3.1 Responsive Proposals

Responsive proposals are those complying in all material aspects of the solicitation including method, timeliness, and substance of the submission. Proposals that do not comply with the terms and conditions of the solicitation may be rejected as non-responsive.

#### 4.3.2 Responsible Firms

Responsible firms are those who, at a minimum, must:

- Have adequate financial resources, as required during the performance of the Contract
- Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments
- Have a satisfactory record of past performance
- Have the necessary technical capability to perform
- Not be debarred or prohibited from performing federally funded work
- Be qualified as a regular provider of the services being offered.
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

## 5.0 **CONTRACT AND CONTRACT NEGOTIATIONS**

Contract negotiations will be a subsequent process outside of the RFQ process. Metro will attempt to negotiate and contract for final design and construction with the most-qualified firm. If an agreement cannot be reached there will be an attempt to negotiate a contract with the second most-qualified firm. This process will continue until an agreement is reached or Metro exhausts the approved list.

During Contract Negotiations, Metro will require detailed cost proposal information including, but not limited to, a breakdown of cost and rate elements as required for Metro to perform a detailed Cost or Price Analysis. The negotiated contract shall not be binding until approved by Metro's Board of Directors.

## 6.0 **PROCUREMENT SCHEDULE**

The following is a **tentative** schedule for the Request for Qualifications process:

Distribute Request for Qualifications	March 1, 2017
Required Pre-Submission Conference	March 15, 2017
Deadline to submit questions or seek clarifications	March 17, 2017
Email distribution of answers to questions/ inquiries	March 22, 2017
Statement of Qualifications Due 4:00 pm CST	March 31, 2017
Notification of Shortlisted Firms/Teams	April 10, 2017
Shortlisted Consultants Interviewed	Week of April 17, 2017
Metro Board action and notification of top-ranked firm	Week of April 24, 2017

## 7.0 SCOPE OF SERVICES

The scope of work and services provided herein is intended to include a broad range of services and activities that may be performed over a number of years at Metro's discretion in order to meet its objectives and improvement programs. Metro will determine the work to be performed. There is no assurance that a particular item of work or project will be performed by the selected professional team. The following should be considered illustrative of the type, quantity and scale of work to be performed under this contract. Funding availability and other factors may result in the addition or removal of anticipated services and projects from this scope of work. At a minimum, the scope of services will include, the following projects:

1. Fueling System Improvements
2. Metro Headquarters Security and Vehicle System Modifications that have been completed previously need to be reviewed to determine the best way to complete the modifications within budgetary constraints.
3. Bus Shelter Siting and Installation (approximately 40 shelters/sites):
4. Metro Headquarters Facility Capital Improvements (2222 Cuming Street):
5. Existing Transit Center Upgrades
6. Creighton University Transit Center Design and Development

### 7.1 ANTICIPATED PROFESSIONAL SERVICES

The professional team's basic services may include the provision of various professional firm services including civil, mechanical, electrical, architectural, landscape architecture, process control and instrumentation, geotechnical investigations and design, structural engineering, easement and property acquisition services, solicitations, construction management and inspection services incidental thereto.

The successful team should have experience working with federally funded projects and the associated requirements including the Disadvantaged Business Enterprise (DBE) program, National Environmental Policy Act (NEPA), Americans with Disabilities Act (ADA) requirements, and procurement guidelines including bidding procedures, Buy America, restrictions on brand name requirements among other relevant knowledge and experience.

The following identifies the desired services to be provided by the selected consultant team. The inclusion of each of these services and/or the extent of each type of services shall vary by project as determined prudent by Metro. The development of project budgets, cost opinions, reports, milestones, timelines as well as coordination services and meetings may be required in *any and all* of the phases of services.

#### 7.1.1 Project Management Services:

- Quality Assurance Plan
- Project Management Plan

#### 7.1.2 Project Programming and Pre-Design Services:

- Conceptual design (approximately 30% design)
- Evaluation of existing facilities and associated infrastructure

- Feasibility studies including with evaluation of various alternatives
- Needs assessments
- NEPA documentation and justification of environmental determination

#### 7.1.3 Design and Permitting Services:

Design firm will provide support services with design including coordination with relevant third-party consulting services including land surveying, geotechnical investigations, and special inspections, coordination with relevant stakeholders and regulatory agencies including but not limited to the City of Omaha and the State of Nebraska. At minimum, this process will require:

- Drawings including architectural, structural, civil, electrical, mechanical, landscape and other as needed;
- Permitting submittals to approving agencies
- Construction (100%) documents;
- Bid documentation designed in accordance with all applicable codes and ordinances; including project manuals, posting on Standard Share or other related locations;
- Attend all pre-con meetings for projects;
- facilitate opinion of probable cost and Independent Cost Estimates;
- Guidance for supporting FTA's requirements for security, ADA accessibility, and other relevant programs.

#### 7.1.4 Construction and Bid Phase Services:

- Review and respond to requests for clarifications and substitutions from potential bidders
- Prepare and release Addenda as necessary
- Attend and participate in pre-bid meetings, walk-throughs and other similar events
- Prepare and modify as necessary the content of the AIA Basic Services Construction Management Edition to comply with state, county, city, requirements; preparation of contracts; change orders

## 7.2 ANTICIPATED PROJECTS

Metro transit will be undertaking several large-scale improvements within the next five years. These improvements will require a series of upgrades to supporting services that are included as part of this contract.

The first of these large improvements will be the implementation of the City's first Bus Rapid Transit line. This service will operate along the Dodge Street Corridor between downtown and the Westroads Transit Center. Service will provide 10-minute frequencies during peak times and 15-minute frequencies during off-peak and weekend service. The BRT vehicles will be 60-foot articulated, low-floor, CNG buses.

The second of these large improvements will be the implementation of an Automatic Vehicle Locations system (AVL). This system will be operational by the end of 2018 to coincide with the opening operations of the Dodge Corridor BRT.

To ensure that systems are in place for seamless delivery of the BRT, the following project items are to be included in this contract:

- (1) Fueling System Improvements:
  - a. Replace Metro’s current fueling system;
  - b. Installation of Compressed Natural Gas (CNG) fueling facilities, coordinating with provider to specify appropriate dispensers, canopy, and maintenance shed and other improvements as required.

**Prairie Rose Sign**  
201 RD M47  
Walnut, IA 51577  
(712) 784-3515 Office  
(712) 784-2452 Fax

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Client: Stirk CNG  
Contact: Kirk McLymont  
Sales Rep: Tim Deal  
Date: 10-21-2015

---

— Client Approval —

---

Signed: \_\_\_\_\_  
Date: \_\_\_\_\_

Changes to Artwork:  
 Color  
 Size  
 Spelling  
 None

---

— Landlord Approval —

---

Signed: \_\_\_\_\_  
Date: \_\_\_\_\_

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Notes

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1. Printed colors may not exactly match color of actual product.  
 2. All work performed by licensed State of Iowa contractors.  
 3. This is an unpublished drawing submitted in connection with a planned project. It is not to be copied, reproduced, exhibited, or shown to anyone outside your organization without written approval.

**Project: CNG Bus Fueling Canopy**  
Location: Metro Area Transit Omaha, NE

Scale: Not to Scale

Drawing # **7**

## (2) Metro Headquarters Security and Vehicle System Modifications

- a. Determine best practices and needed system improvements for incorporating new AVL technology with our ongoing and proposed operations;
- b. Evaluate capacity of existing CNG/Fire Alarm System and recommend changes to provide safety controls for the inclusion of CNG buses in our fleet;
- c. Assess current electrical systems, provide recommendations and then install selected improvements that will ensure support to growing facility and technology needs.

## (3) Bus Shelter Siting and Installation (approximately 40 shelters/sites):

- a. Replacement of existing bus shelters, including any site amendments or repairs. Throughout the contract period, Metro intends to purchase and place approximately 30-40 new bus stop locations. Work associated with this task will include site drawings (example enclosed), any NEPA documentation and approvals. R.O.W. review, document preparation necessary to obtain City of Omaha approval, assistance and consultation with Metro staff in selecting the optimum site locations. Preparation of construction documents for bidding purposes and possible construction oversight.

Potential new shelter locations are as follows:

Intersection / Address	Route(s)	Corner	Direction	Zip Code	Site
17th & Douglas	CB	SW	EB	68102	Significant grade change
24th & L St	24	NW	SB	68107	Flat, minimal site prep
30th & Binney	30	NW	SB	68111	Needs site work
42nd & Ames	18	SW	EB	68104	Needs site work
42nd & Poppleton	3,15	NE	NB	68105	Needs site work
72nd & Mercy	15	SE	EB	68124	Flat, minimal site prep
84th & Center	15	SW	EB	68124	Needs site work
120th & Center	15	SW	EB	68144	Flat, minimal site prep
129th & Center	15	SW	EB	68144	Flat, minimal site prep
132nd & Center	15	SE	EB	68144	Flat, minimal site prep
139th & Center	15	SW	EB	68144	Needs site work
75th & Dorcas (Bergan)	11,13,15,18	NE	WB	68124	Needs site work
15th & Farnam	4,15,18	NE	WB	68102	Flat, minimal site prep
16th & Douglas	CB	SW	EB	68102	Significant grade change
16th & Farnam	15,18	NE	WB	68102	Significant grade change
16th & Farnam	11,36	NW	SB	68102	Flat, minimal site prep
16th & Pine	36	NW	NB	68108	Flat, minimal site prep
Florence & Spencer	18	NW	SB	68110	Flat, minimal site prep

23rd & Cuming	4	NE	WB	68102	Flat, minimal site prep
Park Ave & Woolworth	36	SE	NB	68105	Flat, minimal site prep
40th & Cuming	4	NW	SB	68131	Needs site work
42nd & Dewey	3,15	SE	NB	68105	Flat, minimal site prep
42nd & Dewey	3,15	NW	SB	68131	Flat, minimal site prep
4101 Woolworth (VA)	3	MB	WB	68105	Needs site work
52nd & N.W. Radial	4	NW	WB	68104	Flat, minimal site prep
96th & Q St	55,96	SW	EB	68127	Needs site work
14th & Douglas	13	SW	SB	68102	Flat, minimal site prep
30th & Ellison	14,30	NW	SB	68111	Flat, minimal site prep
30th & Fort	14,30	NW	SB	68111	Needs site work
Park Ave & Leavenworth	11	SW	EB	68105	Needs site work
41st & Leavenworth	11	SW	EB	68105	Flat, minimal site prep
110th & I St	55	NE	WB	68137	Needs site work
30th & California	30,35	SW	SB	68131	Flat, minimal site prep
N.W.Radial & Nicholas	4	SE	NB	68132	Flat, minimal site prep
102nd & Nicholas (WR)	2,4,5,14	MB	NB	68114	Flat, minimal site prep
24th & Spring	24	NW	SB	68108	Flat, minimal site prep
30th & Webster	30	SE	NB	68131	Needs site work
63rd & Q St	13	SW	EB	68117	Flat, minimal site prep
73rd & Military	14	MB	EB	68114	Needs site work
90th & Blondo	5	NW	SB	68114	Needs site work

(4) Metro Headquarters Facility Capital Improvements (2222 Cuming Street):

- a. Evaluate the need for repair/replacement of existing parking lots, including the need for subgrade alterations and curb/gutter repair, and perform approved corrective action.
- b. Design and install landscaping and hardscaping in conjunction with the parking lot modifications;
- c. Review condition of roof and skylights, recommend repairs to extend useful life and perform approved action;
- d. Clean, prepare and replace paint on exterior and interior surfaces.

(5) Existing Transit Center Upgrades (Four Existing Centers)

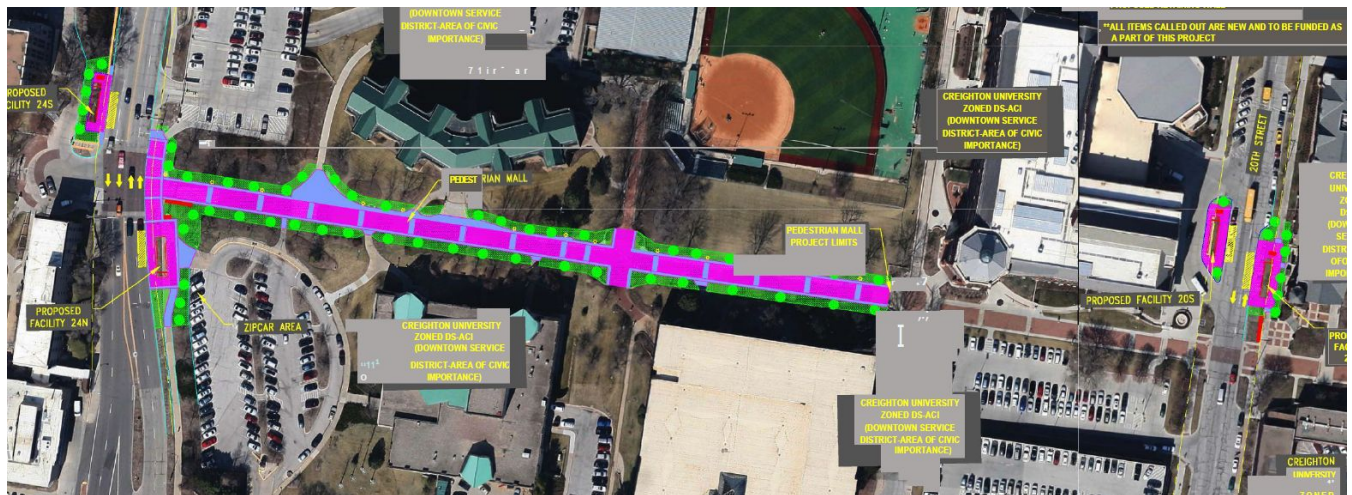
- a. Evaluate subgrade condition, recommend and perform selected alterations that would provide for better longevity for the driveways and bus pads.
- b. Determine existing electrical limitations, propose and install chosen upgrades to facilitate uninterrupted/all-season functionality of
  - i. AVL signage;
  - ii. Security Systems, including direct communication with Metro Headquarters;
  - iii. ITS-related subsystems;



- c. Clean, scrape, prepare and paint all exterior and interior surfaces.

(6) Creighton University Transit Center Design and Construction

- a. Evaluate the placement and location of two pair of new multi-modal facilities to be designed and developed near or around the campus connections at 24<sup>th</sup> Street and 20<sup>th</sup> Street (more specifically detailed below);
- b. Plan and design the multi-modal facilities as well as replacement and construction of the pedestrian mall that runs between 24<sup>th</sup> Street and approximately 21<sup>st</sup> Plaza (more specifically detailed below);
- c. Determine connectivity with other projects ongoing at Creighton.



The new intermodal transit facilities will include two intermodal transit facilities along 24th Street in both the northbound and southbound directions (facilities 24N and 24S) along with two additional intermodal facilities along 20th Street (facilities 20N and 20S).

Facility 24S:

- The 24N facility will have a 400 SF enclosed waiting area with radiant heating, an 800 SF stamped and colored concrete loading platform, PV panels, and a 50 SF electrical room for electricity and LED message boards.
- Transit amenities will include benches, trash receptacles, bicycle racks for patron bicycles, signage, web cameras and a ticket vending machine. In addition, 2,145 SF of urban beautification including both soft and hard-scape areas will enhance the area including the concrete platform, trees, sod, and irrigation.
- Due to the existing retaining wall within the area, the facility will be set back into Creighton University's property and the western wall of the facility will be a replacement structural retaining wall that will replace the existing wall.

## Facility 24N:

- The south 24th Street Facility will have a 540 SF enclosed waiting area with radiant heating, a 1,071 SF stamped and colored concrete loading platform, PV panels, and a 60 SF electrical room for electricity and LED message boards.
- The facility will also have a B-Cycle station located to the north where pedestrians can rent a bicycle and return it to another B-Cycle location within the City or located along the east pedestrian mall. This facility is also located just west of the Zipcar rental area providing even more intermodal transit amenities. Additional transit amenities will include benches, trash receptacles, bicycle racks for patron bicycles signage, web cameras and a ticket vending machine. In addition, 6,830 SF of urban beautification including both soft and hard-scape areas will enhance the area including the concrete platform, trees, sod and irrigation.
- The concrete platform will be constructed to match the existing hardscape patterns along the pedestrian mall that transverses across the entire Creighton University campus.

Facility 20N and 20S will both house similar amenities and sizes.

## Pedestrian Mall:

- The pedestrian mall between 24th Street and 21st Street will include
- 15,200 SF of colored and stamped concrete surrounded by 11,400 SF of concrete edging to match the remaining pedestrian mall to the east and west. The pedestrian mall will be upgraded to meet ADA requirements and connections will be made to the existing sidewalks that serve the campus buildings and 24th Street adjacent to the intermodal facility 24S.
- New light poles, to match the Creighton University standards, will be placed along the north side of the pedestrian mall and 17,400 SF of urban beautification including trees, sodding, and irrigation will be included along the edges.
- The pedestrian mall will require removal of the existing pedestrian mall which is currently dated pavers, trees, and limited utilities such as light poles and storm drain lines. Surface storm drain inlets will be re-utilized for positive drainage.
- Existing decorative walls will also be removed at the intersection just west of the
- project limits.
- Benches and trash receptacles will be placed along the pedestrian mall to match the Creighton standards, and a B-cycle station will be located just east of the project limits.

## 8.0 FEDERAL CLAUSES FOR PROCUREMENT OF PROFESSIONAL SERVICES

**These clauses are a requirement of the RFQ due to Federal Funds being used as a portion of funding the project. It is incumbent upon the main entity submitting in response to this RFQ to ensure sub-contractors**

### **NO OBLIGATION BY THE FEDERAL GOVERNMENT**

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

### **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **ACCESS TO RECORDS**

- (1) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (2) Where any Purchaser which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (3) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (4) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (5) FTA does not require the inclusion of these requirements in subcontracts.

### **FEDERAL CHANGES**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the current Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **TERMINATION**

- (1) Termination for Convenience by Authority.
  - (a) Any Contract, or any part thereof, awarded by the Authority pursuant to this RFCP shall be subject to termination at any time by the Authority upon notice in writing to be effective as of the date of receipt of such notice. Upon receipt of such notice, Contractor shall, unless otherwise specified in the notice, immediately stop all Work and, to the extent permitted under each applicable subcontract or agreement, give prompt written notice to Subcontractors to cease all related Work. In the event this Agreement is terminated by application of this Section, Contractor shall have no claim, right, remedy

or entitlement for damages, compensation or equitable relief for early termination other than as provided in Section (2). Contractor waives any other right, remedy or recourse of any nature whatsoever it may have now or at any other time against the Authority and the FTA.

- (b) In the event of termination for convenience pursuant to Section (1), Authority shall be responsible to pay the Contractor only for all authorized Work performed up to the date of termination and conforming to the Contract, without allocation of profit for unperformed, remaining or incomplete Work. In no event shall the aggregate charges to be paid by Authority pursuant to the preceding sentence exceed the Contract price. In the event of such termination, Contractor shall have no recourse against Authority except as earlier stated in this Section (b) and as follows: Contractor shall be entitled to receive reimbursement from Authority an amount equal to the sum of: (i) the reasonable out-of-pocket costs actually and necessarily incurred by Contractor in withdrawing its equipment and personnel from the Work and otherwise demobilizing; (ii) the actual, reasonable and necessary costs reasonably incurred by Contractor in terminating those contracts, not assumed by Authority, for Subcontractors; (iii) provided, however, Contractor shall not be paid for any Work after receipt of such notice or for any costs incurred by Subcontractors after receipt of Customer's termination notice, or for Work which Contractor could reasonably have avoided Contractor. Contractor shall document any cost claimed by it to Authority's reasonable satisfaction and shall supply Authority with copies of all invoices for Subcontractors covering the amounts claimed as costs for such purpose. Contractor shall submit an invoice to Authority for the amount of reimbursement claimed by Contractor with all supporting information and requisite documents. Unless disputed in good faith by the Authority, Customer shall be paid such amounts within thirty (30) business days after Customer delivers all Work, completed or not completed, in its then current form, free and clear of all liens and assigns to Authority together with any subcontracts, duly assigned, that Authority is willing to assume.

(2) Suspension by Authority.

Upon seven- (7) days' prior notice, the Authority may suspend, delay, or interrupt for up to six (6) months the Work or the Project for the convenience of the Authority. In the event such suspension, delay, or interruption causes a change in Contractor's cost or time required for performance of the Work, the Parties will agree on an equitable adjustment through a written amendment to the Contract to be signed by Authority and Contractor. Authority may withdraw a suspension upon five- (5) days' written notice to Contractor. Any suspension, delay or interruption that exceeds six (6) months shall be deemed to be a termination by Authority and Contractor shall be compensated by Authority as if this were a termination for convenience.

(3) Termination for Default by Authority. Without prejudice to any other remedy or recourse, including its right to seek damages, the Authority may:

- (a) Terminate the Contract effective immediately upon Contractor's receipt of written notice from Authority specifying any of the following events:

- (i) Insolvency of Contractor.
  - (ii) The filing of a meritorious petition of bankruptcy by or against Contractor or the filing of any petition by Contractor seeking protection under Chapters 7, 11 or 13 of the United States Bankruptcy Code.
  - (iii) The conviction of Contractor of a felony in connection with the Work.
  - (iv) Failure to materially comply with any of the Laws.
  - (v) Any attempt to evade any material provision of the Contract or to practice any fraud or deceit upon Authority.
  - (vi) The failure of Contractor or any of its Subcontractor's to fully comply with the lawful directives or cooperate with requests of Authority inspectors or other officials administering or monitoring Work, including any federal, state or other public authority.
  - (vii) The failure to provide any required bond within ten (10) days of notice of the award of the Contract.
  - (viii) Any material misrepresentation by Contractor made at any time.
  - (ix) Contractor improperly assigns or attempts to assign the Contract or any of the Work.
  - (x) The failure to properly maintain, provide or permit Authority access to any books, records, bank accounts or documentation related to the Contract.
- (b) Terminate the Contract, if any of the following (which shall also constitute a material default or breach of the Contract) is not cured to the satisfaction of the Authority within the earlier of thirty (30) days or the time prescribed therefor, in either event from the receipt of written notice from the Authority specifying such breach or default:
- (i) Contractor fails to conform operations, which are in violation of the Laws because of a change in the Laws within 30 days following the effective date of such change.
  - (ii) The failure to promptly pay any sums due to Authority within 5 days of notice.
  - (iii) Contractor refuses or fails to timely commence or perform the Work.
  - (iv) Contractor refuses or fails to supply enough properly skilled workers, or proper materials or Subcontractors to timely perform the Work.
  - (v) Contractor fails to comply promptly with rejection notices or notices to correct defects in the Work.
  - (vi) Contractor causes or permits any repudiation, lapse or cancellation of required insurance or bonds.
  - (vii) Any other materially breach or default of any covenant, term, condition or provision the Contract, whether or not specified in this Section.
- Termination under this Section (b) shall be effective as of the expiration of the period so specified without the necessity of further action by the Authority.
- (4) Wrongful Termination by Authority. In the event the Authority shall wrongfully terminate the Contract, unless otherwise agreed by the Parties in writing, to re-instate or otherwise continue the Contract in accordance with its terms, the Authority's termination shall be construed to be a termination for convenience.

- (5) Future Breach not Waived. No waiver by Authority of any breach or default by Contractor under the Contract shall operate or be construed to operate as a waiver of any other existing or future breach or default, whether of a similar or different character. Failure of the Authority to insist upon strict performance of any provision under this Agreement shall not constitute a waiver of, or estoppel against asserting the right to require strict performance of any other provision of this Agreement or the same provision in the future, nor shall a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a later default or breach. No waiver by any Person of any default by any Party in the performance of any provision, condition or requirement herein shall be deemed to be a waiver of, or in any manner release of, said Party from performance of any other provision, condition or requirement herein; nor shall such waiver be deemed to be a waiver of, or in any manner a release of, said Party from future performance of the same provision, condition or requirement. Any delay or omission of any Party to exercise any right hereunder shall not impair the exercise of any such right, or any like right, accruing to it thereafter. No waiver of a right created by this Agreement by one or more Parties shall constitute a waiver of such right by the other Parties except as may otherwise be required by law with respect to Persons not parties hereto. The failure of one or more Parties to perform its or their obligations hereunder shall not release the other Parties from the performance of such obligations.
- (6) Contractor's Right to Terminate. Contractor shall not be entitled to terminate the Contract for any reason except as provided in this Section. In the event that the Authority fails to timely pay to Contractor any undisputed amounts due pursuant to the terms of the Contract, Authority shall be in default under this Contract and Authority shall be allowed thirty (30) days from receipt of a written notice of such default from Contractor in which to cure such default, after which Seller may immediately terminate this Contract by written notice to Buyer. Any amount disputed by Authority to be due under this Contract must be disputed in good faith.
- (7) Waiver of Contractor's Other Remedies. Except as provided in Section (6), Contractor waives any claim or other right it may have to proceed in law or equity against Authority or to otherwise obtain any money or any damages under or in respect to this Contract for any wrongful or other termination or for any default or breach in the keeping or performance of any warranty, covenant or obligation under or in respect to this Contract by Authority or for any other act, operation or omission of Authority in respect to the Contract, under any theory whatsoever.

#### **CIVIL RIGHTS**

- (1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of Race, Color, Creed, Religion, Sex (including pregnancy), Mental/Physical Disability, Age (40 or over), National Origin, Genetic Information or any other basis prohibited by law. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- (2) **Equal Employment Opportunity**
- (a) **Race, Color, Creed, Religion, Sex (including pregnancy), Mental/Physical Disability, Age (40 or over), National Origin, Genetic Information or any other basis prohibited by law** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (c) **ADA** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

(1) Policy Statement

The Transit Authority of the City of Omaha d/b/a Metro has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Metro has received Federal financial assistance



from the Department of Transportation, and as a condition of receiving this assistance, Metro has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Metro to ensure that DBEs as defined in part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also our policy:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Edith Simpson, Director of Legal/Human Resources has been delegated as the DBE Liaison Officer. In that capacity, the Director of Administration/Human Resources is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by Metro in its financial assistance agreements with the Department of Transportation.

The Metro Board of Directors has adopted a formal Operating Policy demonstrating the company’s commitment to implementing all aspects of the DBE program which has been disseminated to managers and officials responsible for procurement of goods and services. The Policy Statement is posted on company Bulletin Boards. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by posting the statement on the company’s website and including the Statement of Policy in solicitation documents.

- (2) The (Contractor, Sub-recipient, or Sub-contractor) shall not discriminate on the basis of race, color, national origin, or sex in the performance of the (Contract or Agreement). The requirements of 49 C.F.R. Part 26 or at another Part if reissued and the Recipient’s U.S. DOT-Approved Disadvantaged Business Enterprise (DBE) Program (where required) are incorporated in this (Contract or Agreement) by reference. Failure by the (Contractor, Sub-recipient, or Sub-contractor) to carry out these requirements is a material breach of the (Contract or Agreement), which may result in the termination of the (Contract or Agreement) or such other remedy as the Recipient deems appropriate.
- (3) The prime contractor agrees to pay each sub-contractor under this prime contract for satisfactory performance of its contract within thirty (30) days following satisfactory performance of the sub-contractor’s work. The prime contractor further agrees to return any retainage payments to each subcontractor within thirty (30) days upon satisfactory completion of the sub-contractor’s work. Any delay or postponement of payment may occur only for good cause following written approval of Metro. This clause applies to both DBE and non-DBE sub-contractors.

**INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of The Authorities requests, which would cause The Authority to be in violation of the FTA terms and conditions.

**GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

**Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$100,000.** Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both contractors and subcontractors and contracts and subcontracts over \$100,000.

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, The Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to The Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact The Authority for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by The Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the following clause, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

- (1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, The Authority may pursue available remedies including suspension and/or debarment.

**DISPUTE / CONTINUING PERFORMANCE**

In the event of any dispute between Authority and Contractor with respect to the interpretation of this Contract, any required payment under or the performance required by this Contract, including any dispute which may result in a claim, (a "Dispute"), the aggrieved Party shall notify the other in writing of the Dispute then existing (the "Dispute Notice"). In order for a Party to proceed under this Section, the Dispute Notice must specifically state that the aggrieved Party is invoking the Dispute procedure of this Section. The Parties shall then make a good faith attempt to resolve the Dispute, first through direct discussions between their respective designated representatives. In the event the designated representatives are unable to reach agreement then upon the written request of either Party, each of the Parties will appoint a designated executive whose task it will be to meet for the purpose of endeavoring to resolve such dispute. The designated executives shall meet in Omaha Nebraska as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. Such executives will discuss the problem and/or negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding relating thereto. No action for the resolution of such dispute outside of these procedures shall be taken by either Party until one of the designated executives concludes in good

faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other designated executive in writing either party in its sole discretion may invoke litigation, provided that failure to invoke litigation shall not be a waiver of any such Dispute except as otherwise provided in the Contract. During any mediation or litigation which arises out of a Dispute, all parties will continue to perform pursuant to the Contract, without prejudice to the express rights of Authority or Contractor set forth in this Section to terminate the Contract. In addition to the specific rights of termination and suspension as set forth, Authority and Contractor shall have also available the remedy of specific performance, which may be raised as a defense in any action commenced prior to the Parties' compliance with this Section

#### **LOBBYING**

Contractors who apply or bid for an award of \$100,000 or more shall execute and submit with their bid or offer, the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

#### **CLEAN AIR**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **CLEAN WATER**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **FLY AMERICA REQUIREMENTS**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was

used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **SEISMIC SAFETY**

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

### **PATENT AND RIGHTS IN DATA**

(A) **Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

- (1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- (2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
  - (a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
  - (b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
  2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
- (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
- (d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- (f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

- (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
  - (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
  - (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (B) **Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:
- (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
  - (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
  - (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

#### **ENERGY CONSERVATION**

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

**NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS**

The Recipient agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued.

**ADA ACCESS**

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

**FEDERAL PARTICIPATION**

In the announcement of any third party contract award for goods or services (including construction services), having an aggregate value of \$500,000 or more, The Authority will specify the amount of Federal assistance to be used in financing that acquisition of goods and services, and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract.

**STATE AND LOCAL LAW DISCLAIMER**

All regulations listed in this document apply to the Third Party Contractor in the same manner as they apply to The Authority. Offers will be received and reviewed, but no contract shall be awarded until all applicable Federal, State and Local Government regulations have been complied with.

**NEW EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:



1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

#### **SPECIAL PROVISION – TEXT MESSAGING WHILE DRIVING**

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While December 30, 2009, the Grantee is encouraged to comply with the terms of the following Special Provision.

a. Definitions - As used in this Special Provision:

1) Driving

Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. Driving does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

2) Text Messaging

Means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

b. Safety - The Grantee is encouraged to:

- 1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving-
  - a) Grantee-owned or Grantee-rented vehicles or Government-owned, leased or rented vehicles;
  - b) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
  - c) Any vehicle, on or off duty, and using an employer supplied electronic device.
- 2) Conduct workplace safety initiatives in a manner commensurate with the Grantee's size, such as:
  - a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
  - b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

- 3) Include this Special Provision in its sub-agreements with its sub-recipients and third party contracts and also encourage its sub-recipients, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each sub-agreement, lease, and third party contract at each tier financed with Federal assistance provided by the Federal Government.

**EXHIBIT A**  
**RECEIPT OF FEDERAL CLAUSES**

**Project: A&E SERVICES** **Date**  
**Project No. NE-90-X104** **Specification No. 16-16**

I have reviewed the attached Federal Clauses for Procurement of Materials and Supplies in conjunction with Metro’s procurement of **NE-90-X104 Spec #: 16-16 A&E IDIQ** for which \_\_\_\_\_ has provided qualifications for consideration and hereby affirm that \_\_\_\_\_ shall conform to and abide by all aforementioned requirements as set forth and any amendments thereto.

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name DUNS/TINS Number

\_\_\_\_\_  
Date

### EXHIBIT B

#### Debarment and Suspension Certification for Prospective Contractor

Primary covered transactions must be completed by Proposer for contract value over \$25,000.

Choose one alternative:

– The Proposer, \_\_\_\_\_ certifies to the best of its knowledge and belief that it and its principals:

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

**OR**

– The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.) The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 USC § Sections 3801 are applicable thereto.

– **Executed in:**  
**Name:**

\_\_\_\_\_

Authorized Signature

Title

Date

– DUNS/TIN Number:

### EXHIBIT C

#### Debarment and Suspension Certification (Lower-Tier Covered Transaction)

This form is to be submitted by each Subcontractor receiving an amount exceeding \$25,000.

- The prospective lower-tier participant (Proposer) certifies, by submission of this Proposal, that neither it nor its "principals" as defined at 49 CFR § 29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

If the prospective Proposer is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so by placing an "X" in the following space: \_\_\_\_\_

**THE PROPOSER, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.**

**Name and title of the Proposer's authorized official:**

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Date

DUNS/TIN Number:

### EXHIBIT D

#### Non-Collusion Affidavit

This affidavit is to be filled out and executed by the Proposer; if a corporation makes the bid, then by its properly executed agent. The name of the individual swearing to the affidavit should appear on the line marked "Name of Affiant." The affiant's capacity, when a partner or officer of a corporation, should be inserted on the line marked "Capacity." The representative of the Proposer should sign his or her individual name at the end, not a partnership or corporation name, and swear to this affidavit before a notary public, who must attach his or her seal.

– State of _____, County of _____	
I, _____, being first duly sworn, do hereby state that <small>(Name of Affiant)</small>	
I am _____ of _____ <small>(Capacity) (Name of Firm, Partnership or Corporation)</small>	
whose business is _____	
and who resides at _____	
and that _____ <small>(Give names of all persons, firms, or corporations interested in the bid)</small>	
is/are the only person(s) with me in the profits of the herein contained Contract; that the Contract is made without any connection or interest in the profits thereof with any persons making any bid or Proposal for said Work; that the said Contract is on my part, in all respects, fair and without collusion or fraud, and also that no members of the Board of Trustees, head of any department or bureau, or employee therein, or any employee of the Authority, is directly or indirectly interested therein.	
_____ Signature of Affiant Date	
Sworn to before me this _____ day of _____, 20____.	_____ – Seal
_____ Notary public My commission expires	

### EXHIBIT E Lobbying Certification

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification thereof.
  
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal Contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
  
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**THE PROPOSER, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.**

Name of the bidder or Proposer's authorized official: \_\_\_\_\_

Title: \_\_\_\_\_

Signature

Date

### EXHIBIT F

### Request for Clarification or Substitution

**Request for Clarifications/Substitutions**

Project Title: \_\_\_\_\_ Date: \_\_\_\_\_

Company Name: \_\_\_\_\_ Page No: \_\_\_\_\_

Document Reference (check one):

General Requirements: \_\_\_\_\_

Specifications: \_\_\_\_\_

Section Number: \_\_\_\_\_

Section Title: \_\_\_\_\_

**BIDDER'S REQUEST:**

\_\_\_\_\_

**METRO RESPONSE:**

Approved \_\_\_\_\_

Denied \_\_\_\_\_

**Metro Comments:**

\_\_\_\_\_  
Metro Authorized Signature

\_\_\_\_\_  
Date of Response

Grant Administrator

Metro Transit, 2222 Cuming Street, Omaha, NE 68102 jrumery@ometro.com



**EXHIBIT G**  
**ACKNOWLEDGMENT OF ADDENDA**

In submitting this Bid, I hereby acknowledge receipt of addendum # \_\_\_\_ through \_\_\_\_.

\_\_\_\_\_  
Print Name of Firm

\_\_\_\_\_  
Print Name of Authorized Representative

\_\_\_\_\_  
Print Email Address

\_\_\_\_\_  
Print Title of Authorized Representative

\_\_\_\_\_  
Print Street Address / Mailing Address

\_\_\_\_\_  
Area Code & Telephone Number

\_\_\_\_\_  
Area Code & Fax Number

\_\_\_\_\_  
Signature of Authorized Representative

**This form must be signed and submitted in bid package. All signatures must be original.**

### EXHIBIT H

BIDDERS LIST DATA FORM	
<p>Metro is required pursuant to 49 CFR Part 26(c) to create and maintain a comprehensive Bidders List. This Bidders List Data Form will be used to collect bidder information used to determine the relative availability of Disadvantaged Business Enterprise (DBE) and non-DBEs, and will assist with establishing Metro’s annual DBE goal. Metro’s Bidders List is a compilation of bidders, proposers, quoters, subcontractors, and suppliers of materials and services who have submitted bids during the advertising period of a solicitation for services and/or goods. <b><u>Please print legibly and provide the following information:</u></b></p>	
PART A: BUSINESS DATA	
1.	Business Name: _____
2.	Business Address: _____ _____
3.	Contact Person: _____ Title: _____
4.	Phone: ( ) _____ Fax: ( ) _____
5.	Email Address: _____
6.	Is this business a certified DBE under Nebraska’s Department of Roads Unified Certification Program? ____ Yes ____ No
7.	Age of Business: ____ Years ____ Months
8.	Business Annual Gross Receipts:
	<input type="checkbox"/> < \$500,000 <input type="checkbox"/> \$500,000 to \$1,000,000 <input type="checkbox"/> \$1,000,000 to \$2,000,000 <input type="checkbox"/> \$2,000,000 to \$5,000,000 <input type="checkbox"/> >\$5,000,000
PART B: PROJECT AND WORK DESCRIPTION	
9.	Project Name: _____
10.	Provide a brief description of the scope of work, service, and/or materials to be performed or furnished: _____ _____ _____
11.	Provide the NAICS code(s) that best defines your business: _____
12.	Will the business subcontract any of work, service, and/or materials? ____ Yes* ____ No (*If Yes, then the subcontractor(s) must also complete an individual Bidders List Data Form.)
PART C: SIGNATURE	
<p>The undersigned hereby declares that the information set forth on this form is current, complete and accurate.</p>	
Authorized Signature: _____	Date: _____
Printed Name: _____	Title: _____



## EXHIBIT I

### Conflict of Interest Disclosure Statement

**Project Name: Architectural/Engineering IDIQ**

As the Consultant's project manager or approved representative, I, hereby certify that:

I am familiar with the attached conflict of interest guidance and the conflict of interest laws including, but not limited to, 49 CFR 18.36, 48 Fed Reg. 34263, 40 CFR 1506 and Nebraska Rev. Stat. §§49-1401 to 1444 and 49-1493 to 14,104.

And to the best of my knowledge and belief, of all relevant facts – concerning past present or currently planned interests or activities (financial, contractual, organizational or otherwise that relate to the proposed work and bear on whether I have or my organization has a possible conflict of interest), determined that, for myself, any owner, partner or employee with my firm or any of my sub-consulting firms providing services for this project, including any family members and personal interests, that for the above referenced project:

- No real or potential conflicts of interest exist with respect to (1) be able to render impartial, technically sound, and objective assistance or advice and (2) being given an unfair competitive advantage
- Real conflicts of interest or the potential for conflicts of interest exist.

Furthermore, I certify that I have reviewed the proposed scope of work and project area and to the best of my knowledge, determined that, for myself, any owner, partner or employee, with my firm or any of my sub-consulting firms providing services for this project, including family members and personal interests of the above persons that are no financial or other interests in the outcome of the project, including but not limited to work associated with the Bus Rapid Transit Final Design unless described and noted on the attached.

If a real or potential conflict has been identified, describe on the attached sheet the nature of the conflict, including the information requested on the reverse side of this form for the type of conflict being reported, and provide a detailed description of Consultant's proposed mitigation measures (if possible). Complete and sign this form and send it, along with all attachments, to Metro.

Furthermore, I certify that for myself, any owner, partner or employee with my firm or any of my sub-consulting firms providing services for this project, will comply with professional codes of conduct governing participation in the above referenced project and whenever conducting business on behalf of Metro.

I recognize that a conflict of interest disclosure is an ongoing obligation. Should I or my organization become aware of any actual or potential conflicts of interest during the performance of this contract, I or my organization will advise Metro and propose mitigation or explain why none is needed.

Conflicts of interest or the failure to disclose conflicts, real or potential, may preclude award of a contract or termination of a contract for cause.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**Conflict of Interest Disclosure Form**

The following Sections are provided as guidance in determining whether a real or potential Conflict of Interest (COI) exists and in disclosing details concerning potential conflicts of interest.

Section 1 – Consultant Officer or Employee COI

Is there anyone in your firm or business who is either; (1) employed by, on a full or part time basis; or (2) a public official or agent of, the local public agency or partner agencies from whom this Request for Qualifications (RFQ) has been received?

If yes, please list below: (1) the name, address and phone number of the person(s); (2) the position held by that person(s) with Consultant; (3) the position held by that person(s); and (4) a detailed description of the duties of that person(s) for the local public agency, including whether that person(s) has any duties concerning the negotiating, approving, accepting or administering of any contract or subcontract for the federal-aid transportation project?

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Section 2 – Persons Associated with local public agency, Financial or Personal Interest Conflict of Interest

The potential for conflicts of interest extends to persons associated with a local public agency official, employee or agent. There may be a conflict of interest on a federal-aid project if a person associated with an official, employee or agent has a financial or personal interest in a consulting firm or business providing services for a project. These indirect conflicts of interest can extend to the following persons associated with an LPA official, employee, or agent: (a) Any member of his [or her] immediate family; (b) his [or her] partner; or (c) an organization which employs, or is about to employ, any of the above, when that organization has a financial or other interest in the firm selected for award. Is there anyone with a financial or personal interest in your firm or business who is associated with (as listed in the preceding sentence) and responsible for negotiating, approving, accepting or administering any contract or subcontract on behalf of Metro for this project?

If yes, please below: (1) the name, address and phone number of the person(s); (2) the nature of the financial or personal interest in firm; (3) the person’s relationship to Metro, including the position held by the official, employee or agent of Metro; and (4) a detailed description of the duties of the official, employee or agent of Metro, including whether that person(s) has any duties for the Metro concerning the negotiating, approving, accepting or administering of any contract or subcontract for Metro’s federal-aid transportation project?

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Section 3 – Real Estate COI

If Consultant (or sub-consultant) has an interest in real estate located along or near the project **that might be acquired, in whole or in part**, for this federal-aid transportation project, which interest is either; (1) through anyone in Consultant’s organization, including a member of immediate family or a sub-consultant, having an ownership interest in; or (2) through a client for whom Consultant has been retained to provide professional services to the owner for that tract of land, then Consultant must disclose such interest and abstain from being involved in any aspect of the right-of-way valuation or acquisition process for the federal-aid transportation project.

If either of these situations exist, please provide below: (1) the name of the owner, the address and legal description of the property, and a description of the Consultant’s interest in the property; (2) a map or aerial photo identifying the location of the property; (3) a description of the potential need or use of this property for the federal-aid transportation project; and (4) a declaration by Consultant that it will comply with the third sentence of 23 CFR Section 1.33.

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Section 4 – Outcome of Project bias/Objectivity

If Consultant, agent or subconsultant because of other activities, financial interests, relationships, or contracts is unable, or potentially unable, to render impartial assistance or advice to the grantee (including the appearance of inability), then the Consultant must disclose such interest.

If any of these situations exist, please list below the nature of any potential partiality or appearance of any potential bias when Consultant, agent or subconsultant has or at any time during the life of the contract, any pecuniary or other interests in the outcomes of the project not listed above.

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Section 5 – Unfair Competitive Advantage

*Unfair competitive advantage* occurs when one contractor has information not available to other contractors in the normal course of business. For example, an unfair competitive advantage would occur when a contractor developing specifications or work statements has access to information that the grantee has paid the contractor to develop, or information which the grantee has furnished to the contractor for its work, when that information has not been made available to the public. Another example where an unfair competitive advantage might arise is where a contractor is allowed to write specifications or statements of work around its own or an affiliate’s corporate strengths or products and then compete for a contract based on those specifications. If an individual employee has access to inside information, a possible solution would be to wall off that employee, so he cannot give his employer an unfair competitive advantage.

If any of these conditions exist, describe below (1) the nature of the unfair competitive advantage including the type of information involved, (2) its source, and (3) the dates when such information was obtained or generated.

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Section 6 – Supplemental

Do you (or your organization or subconsultant(s)) have or have you ever had any contracts, agreements, special clauses or other arrangements which prohibit you from proposing work to be performed in this solicitation or any portion thereof:

To avoid what you perceive as a possible conflict of interest do you or your organization or subconsultants propose to exclude portions of the proposed work; employ special clauses; or take other measures?

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Other relevant information pertaining to a conflict of interest or potential for a conflict of interest:

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Section 7 – Mitigation Plan

If applicable, please describe any proposed mitigation measures or plan:

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Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_