

REQUEST FOR PROPOSALS

**NUMBER
RFP #10-159**



THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

METROPOLITAN BOARD OF PARKS AND RECREATION

Master Planning and Design Services For Fairgrounds Park

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Contract Specialist
Department of Finance
Division of Purchases***

This proposal solicitation document is prepared in a Microsoft Word 9.0 (Office 2000) format. Any alterations to this document made by the Proposer may be grounds for rejection of proposal, cancellation of any subsequent award, or any other legal remedies available to the Metropolitan Government.

There may be one or more amendments to this proposal solicitation. If your company desires to receive copies or notices of any such amendments, you must provide the information requested below to Metro Purchasing. Please send this information to Jan Wiles via fax at (615) 862-6179 or by e-mail at jan.wiles@nashville.gov. **Metro will send amendments only to those firms that timely complete and return this form via fax or provide the requested information by timely e-mail.**

E-mail address

Send amendments by (check one): ☐ fax
☐ E-mail

E-mailed amendments will be sent in a Microsoft Word 9.0 (Office 2000) format. Any alterations to the document made by the proposer may be grounds for rejection of proposal, cancellation of any subsequent award, or any other legal remedies available to the Metropolitan Government.

Amendments also will be posted on the Metro Government Purchasing web site (<http://www.nashville.gov>) in a PDF format. Check the Expanded Information page for the particular proposal solicitation for any posted amendments.

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Request for Proposals
RFP #10-159

**Master Planning and Design Services
For Fairgrounds Park**

1. Introduction/Overview

A. Purpose/Objective

The Metropolitan Government of Nashville and Davidson County (hereinafter, Metro) is soliciting proposals from qualified architectural and/or landscape architectural firms to provide professional and technical consulting services to the following department and for the following project:

Issuing Department:	Metropolitan Board of Parks and Recreation
Project Title:	Master Planning and Design Services for Fairgrounds Park

Metro intends to award one (1) contract to provide these services and, if awarded, it will be effective on the date it is signed by all required parties and filed in the Office of the Metropolitan Clerk.

B. Project Background/Description

The project consists of development of a park master plan and construction documents for a roughly forty-acre portion of the tract that was formerly the Tennessee State Fairgrounds in Nashville, Tennessee. In 2009, the Nashville Civic Design Center, in collaboration with the Fairgrounds Task Force appointed by Mayor Karl Dean, undertook a series of public meetings to gather input on the future redevelopment of the entire 117-acre fairgrounds site. Among the findings in the resulting *Report on the Public Meetings, Findings & Recommendations for the Future Use of the Tennessee State Fairgrounds* was consensus community support for the restoration of the Brown's Creek floodplain, and the development of compatible recreational and park facilities.

This project implements the report's recommendations with a park design focused primarily in the floodplain portion of the site. This area is bounded on the east by Craighead Street and the west, topographically, by a hill. Note that these boundaries may shift slightly as site analysis and further consideration warrant. The site is currently characterized primarily by surface parking, turf, a former racetrack, and poorly defined through-streets, with a narrow buffer of trees in the riparian zone. The below map roughly illustrates the park boundaries in all areas not identified as "Potential Development Area." Note that the map does not reflect an existing park program or layout and is used here solely for illustrative purposes.

The project will include master planning, prioritizing and providing opinion of cost for all development recommendations, creation of construction documents, facilitating public input, coordinating work with all relevant agencies, and otherwise completing all contract requirements. Construction documents must be ready for bid within **120 days** of notice to proceed.



C. Scope of Services

1. Planning Considerations

Previous Efforts

The 2010 *Report on the Public Meetings, Findings & Recommendations for the Future Use of the Tennessee State Fairgrounds* is an excellent starting point for master planning and includes a synthesis of previous studies, site data, analysis and recommendations. Master planning under this contract will be consistent with the report and will not duplicate efforts. Please review the document prior to submittal of your proposal. The report can be found at <http://www.nashville.gov/mayor/docs/fairgrounds/FairgroundsReport.pdf>.

Development of the report involved a substantial community participation process, including multiple public meetings. For this reason, it is anticipated that two public meetings will provide sufficient community input opportunities during the park planning process -- likely during the assessment and preliminary plan phases of the process.

Program

The program for the site will include a greenway and other outdoor recreational facilities to be determined, which may include sports fields, a playground, courts or other features serving the immediate neighborhood and the broader community. The final program will be development through public input and in consultation with Metro Parks. In addition, the final program will be consistent with the recommendations and priorities established in the *Countywide Parks & Greenways Master Plan* (revised 2008).

Sustainability

Brown's Creek is included in the state's 303(d) list of impaired waterways. Under separate contract, the Tennessee Stream Mitigation Program (TSMP) will be restoring the segment of Brown's Creek that flows through the project site -- approximately three-quarters of a mile in length. The assessment and design phase of creek restoration is tentatively scheduled to be completed in mid-2012, followed immediately by construction. TSMP anticipates having the necessary relevant project data available per the park planning schedule. TSMP will function as a partner and in a technical advisory capacity to the park design team. The Consultant will maintain communication with TSMP and ensure that the park design and construction is coordinated and consistent with all restoration efforts.

The plan shall incorporate applicable best management practices, low impact design principles, and other relevant sustainable planning, building and design strategies, including those that address:

- Site permeability
- Habitat restoration and enhancement
- Reducing floodplain development impacts
- Minimizing light pollution
- Water use efficiency
- Energy conservation and atmospheric impact
- Materials and resource use and efficiency
- Non-motorized access
- Active living by design

Metro Parks is receptive to innovative strategies for achieving sustainability objectives.

Other

All recommendations shall be compatible with all applicable Americans with Disabilities Act requirements.

The selected Consultant will exhibit extensive experience specific to the development of master plans for large, multi-objective parks and related site planning; the design of outdoor sports facilities, riparian restoration, pedestrian and bicycle facilities, and urban design.

In addition, experience specific to the management of intensive, large-group, public input planning processes is required.

2. Services to be Provided by the Consultant

Consultant Shall

1. Furnish all labor, materials and equipment to complete the entire scope of services in accordance with the description, requirements, criteria and instructions contained in this document.
2. Produce a conceptual site master plan for the entire park, including related maps, visuals, and cost estimates. Deliver all presentation boards to Metro Parks.
3. Furnish sufficient professional, technical, supervisory and administrative personnel to ensure the prosecution of the work, including, but not limited to, the disciplines of planning, landscape architecture, hydrology, engineering and architecture, as needed.
4. Provide contractual arrangements, project submittal and design in accordance with Metro criteria, regulations, manuals and other applicable standards; and otherwise successfully provide all of the services required under this RFP.
5. Commence work promptly after issuance of a purchase order in order to complete master plan within **120 calendar days**.
6. Make site visits as necessary for analysis, observation, data collection and documentation of existing conditions.
7. Analyze all existing site information, plans and data.
8. Receive input from various stakeholders, which may include, but is not limited to, Metro Parks and its various divisions, other interested parties and the general public, as deemed necessary by Metro. The Consultant shall notify Metro Parks in advance of any meetings scheduled with third parties, in order that Parks representatives may attend as determined necessary by Metro. Copies of correspondence between the Consultant and other agencies shall be furnished to Metro Parks as the work progresses.
9. Receive input from relevant agencies which may include, but is not limited to, Metro Water Services/Stormwater Division, Metro ADA Office, Metro Public Works/Engineering Division, Metro Historical Commission, Tennessee Department of Environment and Conservation, and others.
10. In collaboration with Metro Parks, conduct two large-group public meetings for the purpose of soliciting community input and provide written documentation of input, including public comments. Proposers may suggest an alternate, equivalent public input process
11. Prepare design-development drawings and obtain preliminary approval from all applicable permit-issuing agencies.

12. Provide Metro Parks with a detailed cost estimate for the park program as recommended in the master plan. (Total design and construction costs will not exceed **\$2,000,000.**)
13. Prepare construction and bid documents for this project. Graphic documents must be created in, or converted to AutoCad.dwg digital format useable by Parks staff. The Consultant must provide printed copies of the documents sufficient in number to cover distribution for bidding and for construction use.
14. Obtain approvals from all regulatory and permitting agencies and ensure compliance with the Americans with Disabilities Act (ADA), as determined by Metro General Services/ADA Compliance Division.
15. Coordinate the assembly of bid documents and assist Metro Finance Department/ Purchasing Division with the bid process for this project.
16. Modify plans and assist with re-bidding of this project if bids exceed the available funds.
17. Provide periodic inspections and bi-weekly progress meetings with the contractor and Metro Parks during construction, including the approval of pay requests and resolution of conflicts or changes required during construction. The Consultant must coordinate all reviews necessary for issuance of Notice of Substantial Completion.
18. Coordinate the close-out process for this project and prepare and provide as-built documents in AutoCad.dwg format for this project.
19. Confirm and collect warranty information for all applicable items in the contract and coordinate the assembly of at least three complete sets of all close-out documents for this project. These must be presented in three-ring binders.
20. Provide review and resolution of any deficiencies in the project discovered during the contractor's warranty period of one year from date of substantial completion.

D. Minimum Qualifications

The Review Board appointed for this RFP, along with the Metro Division of Purchases, will review the entire **Master List of Architects and Engineers** for firms who appear to be qualified to perform the requested work. All such firms will be requested to submit additional qualifications for the work solicited by responding to this RFP.

Note: Firms not on the Master List may also submit proposals, but should submit an application form to be placed on the list in order for Metro to determine if the firm appears to be qualified as noted above. Please contact Richard Duncan by telephone at (615) 862-6637 or by e-mail to determine if your firm is on the Master List if you are not sure, and to obtain an application form if not.

In addition to the above, Offerors must demonstrate the following **minimum qualifications** in their proposal (see Tab III, Minimum Qualifications, page 18):

1. Specific qualifications of the firm
2. Staffing schedules of existing projects

3. List of affiliations:
 - Firms with whom the prime may associate
 - Small and Disadvantaged Business associates
4. Small and/or Minority Business utilization plans
5. Firm's present financial condition
6. List of current litigation in which the firm is a defendant
7. List of employee licensing violations (past five years)

E. Minimum (General) Criteria to be Determined "Responsive"

- Does the proposal submitted conform in all material respects to the solicitation?
- Specifically, were minority-owned and/or woman-owned business enterprises (MWBE) considered and contacted in a timely manner for this contract proposal (Good Faith Effort)?
- Was sufficient documentation provided with the proposal to demonstrate that Good Faith Efforts were made?

F. Method of Source Selection

Metro has used the Request for Proposals method of source selection for Architects and Engineers, as authorized by Section R4.08.080.01 of the Metro Procurement Regulations and as revised by the Procurement Standards Board on September 10, 2009, for this procurement.

An award, if made, will be made to the responsible Offeror whose proposal is most advantageous to Metro, taking into consideration the factors set forth in this Request for Proposals. Metro will not use any other factors or criteria in the evaluation of proposals received.

Metro may, as it deems necessary, conduct discussions with responsible Offerors determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, solicitation requirements.

G. Inquiries

Direct questions related to this RFP to Richard Duncan, at the Division of Purchases, by fax at (615) 862-6179 or via e-mail to richard.duncan@nashville.gov. Submit such questions in writing when time permits. Include the RFP number, page, and paragraph number for each question. Questions are required to be submitted by **4:30 P.M.**, Nashville local time, on **Wednesday, January 5, 2011**.

If you mail the questions to the buyer, do not place the RFP number on the outside of the envelope containing questions. The buyer may identify such an envelope as a sealed proposal and may not open it until after the official RFP due date.

Offerors must clearly understand that the only official answer or position of the government will be the one stated in writing from the Division of Purchases. For general questions, call Richard Duncan at (615) 862-6637.

H. Pre-Proposal Conference

A Pre-Proposal Conference will be held on **Thursday, December 30, 2010, at 1:00 P.M.**, Nashville local time, in the **University Conference Room**, Basement Floor, Lindsley Hall, 730 2nd Avenue South, Nashville, TN 37210. Metro strongly urges all prospective Offerors to attend, but attendance is not mandatory. This conference will be the only pre-proposal meeting held for the benefit of prospective Offerors.

I. Projected Timetable

The following projected timetable should be used as a working guide for planning purposes only. Metro reserves the right to adjust this timetable, as required, during the course of the RFP process.

<u>EVENT</u>	<u>DATE</u>
RFP Issued	December 15, 2010
Pre-Proposal Conference (1:00 P.M., CST)	December 30, 2010
Written Questions Due (4:30 P.M., CST)	January 5, 2011
Amendment Issued, if applicable	January 7, 2011
Proposals Due (3:00 P.M., CST)	January 14, 2011
Evaluation of Proposals	January 28, 2011
Oral Interviews, if applicable	February 4, 2011
Award Notification	February 18, 2011

2. Americans with Disabilities Act

The Consultant shall assure to Metro that all services provided through this contract shall be completed in full compliance with the Americans with Disabilities Act ("ADA") and Architectural and Transportation Barriers Compliance Board, Federal Register 36 CFR Parts 1190 and 1191, Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; proposed rule, published in the Federal Register on July 23, 2004, as has been adopted by Metro.

The Consultant will ensure that participants at public meetings with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

3. Non-Discrimination

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

4. Metro Departmental Responsibilities

The Metropolitan Board of Parks and Recreation shall have and perform the following responsibilities:

- Designated Project Coordinator (liaison/representative):

Tim Netsch, telephone (615) 862-8400

- Provide reasonable access to Department employees' availability for interviews and provide access to selected sites and/or properties.

5. Metro's Right to Inspect

Metro shall have the right to inspect any facility or project site where the services performed under the resultant contract are performed.

6. Licensing and Business Requirements

Offeror is responsible for complying with all licensing requirements and associated business regulations whether Local, State or Federal.

7. Terms and Conditions of Contract

The contract resulting from this RFP shall be subject to the terms and conditions set forth in the attached **Agreement (Attachment A)**.

8. Assistance to Small Businesses as Subcontractors and Suppliers

A. Incentive for Small Business Participation

Metro provides an incentive to Offerors to maximize the usage of small businesses in the performance of the contract. In the evaluation of proposals, Metro rewards Offerors for committing to use small businesses as subcontractors by considering the minimum percentage of total contract dollars of committed small business subcontractor participation. In addition, if the Offeror is a small business, Metro rewards the Offeror for the amount of work it commits to self-perform.

A total of ten (10) points will be assigned to the Offeror with the largest percentage of small business participation (having met the minimum requirement level) and points will be prorated to the rest based on their respective participation levels. The minimum requirement level is no more than one (1) point granted for each 1% of total contract value for small business utilized (maximum of 10 points).

However, if the largest Offeror of small businesses proposes participation at 20% of the total contract value, they would receive ten (10) points, and the one proposing participation at 10% of the total contract value would receive only five (5) points.

B. Assistance in Locating Small Businesses

Offerors who desire assistance in locating potential small business subcontractors and suppliers are encouraged to contact Ms. Michelle Lane, Minority and Women Business Assistance Office (BAO), at (615) 862-5471, or michelle.lane@nashville.gov.

C. Definition of Small Business

A "small business" means a United States business which is independently owned and operated and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field. In addition, in order to qualify as a small business for purposes of this RFP, a business must meet the standards set forth in Metro's **Small Business Standards** included as **Attachment B** to this RFP.

D. Documentation Requirements

Offerors must complete the **List of Proposed Small Businesses (Attachment C)** to this RFP and submit the attachment with the proposal to make a commitment to use subcontractors that claim small business status. Changes to the list of proposed small businesses must be submitted in writing and approved in advance by Metro.

Offeror must confirm that any small businesses to be included in its proposal meet the small business standards set forth by Metro. Offeror shall likewise notify its proposed small businesses that Metro requires 1) that the subcontractor be **registered** to do business with Metro and 2) have been **approved** as a small business through the submission to Metro of documentation to confirm small business status, including a copy of their two (2) most recently submitted business tax returns as well as IRS Form 941 (Employer's Quarterly Federal Tax Return).

This information will be reviewed by Metro and used to confirm the small business status. Small business status must be approved by Metro **prior to proposal submission**. While Metro commits to having documents reviewed and status granted as quickly as possible after the receipt of the necessary documentation, to be safe, documents should be submitted **no later than four (4) days** before the bid/proposal is due to allow time for status to be granted.

E. Progress Payments to the Contractor

As a condition of progress payments to the Contractor, Metro will require that Contractor submit evidence of participation of and Contractor's payment to all small businesses participating in any resultant contract. This evidence shall be submitted with each invoice and shall include copies of subcontracts, subcontractors' applications for payment, subcontractors' certified payrolls, and proof of payment to small business subcontractors; and purchase orders, invoices, and proof of payment to small business suppliers.

F. Metro Remedies for Misrepresentation

If, during the course of the contract, Contractor fails to maintain the level of small business participation committed to in the Contractor's proposal, or if any material representation made in Contractor's proposal concerning the small business status of any Subcontractor or Contractor's involvement in the ownership, operation or management of any subcontractor claiming status as a small business is shown to be false, Metro may, at its sole option and in addition to any other remedies available under the contract, at law or in equity, terminate the contract. Further, in the event that Metro terminates the contract, the Contractor shall pay Metro's full reprocurement costs, including, without limitation, any costs associated with reprocurement delays.

Metro will institute debarment proceedings against any Offeror that misrepresents in a proposal any material fact concerning the small business status of itself or any subcontractor or Offeror's

involvement in the ownership, operation or management of any subcontractor claiming status as a small business. In addition, Metro may, at its sole discretion, assess a charge representing the cost of all audit and legal time and expense incurred by Metro as a result of the Contractor's failure to maintain the level of small business participation committed to in the Contractor's proposal.

9. Procurement Non-Discrimination Program Requirements

A. The consideration and contact of minority-owned and/or woman-owned business enterprises (MWBE) with a significant presence in the Nashville MSA is required for a Responsive offer.

Metro's Business Assistance Office (BAO) will provide a listing of known Metro registered and certified MWBE firms. You are encouraged to reach out and develop additional MWBE firms for inclusion in your offer, but they must be registered online with Metro prior to the proposal due time and date. Certification is required by the time of the proposal due date.

B. The provision of the following items as part of the proposal package is a minimum requirement for a responsive proposal:

1. Covenant of Non-Discrimination

Your firm has committed to the Covenant of Non-Discrimination when registering with Metro to do business. To review this document, go to Nashville.gov and visit the Procurement or Business Assistance web pages (it is **not** necessary to resubmit this with each proposal).

2. Statement of Good Faith Efforts. This completed form (attached) is required at the time of bid/proposal submission. Each of the first three listed statements must be initialed by an authorized company official indicating that the Offeror has made all of the good faith efforts required by the Procurement Non-Discrimination Program. Offerors should also initial any of the additional good faith efforts listed subsequently on the form as they are applicable.

3. Statements of Interested, Notified and Successful Subcontractors

Each Offeror must provide the attached form (**Attachment D**) indicating that the Offeror has delivered written notice to **at least three (3)** available MWBEs if use of MWBEs is reasonable and if BAO can provide at least three MWBEs for the applicable category. The interested, notified, successful and unsuccessful bid prices are one of the several required responses on the form.

4. Letter of Intent to Perform as a Subcontractor/Joint Venture

In the event that an Offeror submits the use of subcontractors, suppliers and/or joint ventures, a letter of intent signed by both the subcontractor/supplier/joint venturer must be submitted to Procurement by the end of the second business day **following issuance of the intent to award letter.**

5. Registration and Certification

To be considered for the purpose of being *Responsive*, the subcontractor, supplier and/or joint venturer must be registered online with Metro by the **proposal due date**. Certification is required by the time of the proposal due date.

10. Instructions for Proposal

A. Compliance with the RFP

Proposals must be in strict compliance with this Request for Proposals. Failure to comply with all provisions of the RFP may result in disqualification.

B. Insurance Requirements

By signing its proposal, Offeror acknowledges that it has read and understands the insurance requirements for the proposal. Offeror also understands that the evidence of required insurance must be submitted within fifteen (15) working days following notification of its offer being accepted; otherwise, Metro may rescind its acceptance of the Offeror's proposal.

The specific insurance requirements for this solicitation are: Contractor to provide one million dollars commercial liability, one million dollars coverage for professional liability, one million dollars automobile liability, workers compensation with statutory limits, and one hundred thousand dollars employers' liability. Detailed requirements are listed in the attached **Agreement (Attachment A)**.

C. Delivery of Proposals

All proposals are to be **delivered** before **3:00 P.M.**, Nashville local time, on **Friday, January 14, 2011**, to:

Metropolitan Government of Nashville and Davidson County
Division of Purchasing and Contract Management
Jeff L. Gossage, Purchasing Agent
Suite 101, Lindsley Hall
730 2nd Avenue South
Nashville, TN 37210

Note: The Division of Purchases will not accept any proposals received after 3:00 P.M. and shall return such late proposals to the Offeror. Metro will not accept any responsibility for proposal responses being delivered by third party carriers, including the United States Postal Service. (Please note that the USPS does not deliver to this address.)

Proposers must submit **one (1) original** and **five (5) numbered copies** of the proposal (**total of 6**). Additionally, **one (1) copy** of the proposal on a **CD-ROM** in Microsoft Word or PDF format is required.

Proposals will be opened publicly in a manner to avoid public disclosure of contents; however, only names of Offerors will be read aloud. List the Proposal Number on the outside of the box or envelope and note "Request for Proposals enclosed."

D. Evaluation of Proposals (Procedure)

An evaluation panel (Review Board), which may include representatives of various Metro departments, will be appointed by the Metro Director of Finance to evaluate the proposals. Other agencies and consultants of Metro may also review the proposals.

The panel will first examine the proposals to eliminate those that are clearly non-responsive to the stated requirements. Therefore, Offerors should exercise particular care in reviewing the Response Format required for this RFP.

The Minority and Women Business Assistance Office (BAO) will work with Offerors to ensure effort was made to satisfy the Procurement Nondiscrimination Program (PNP) requirements. However, after limited engagement, if a firm fails to demonstrate efforts to achieve this requirement, the BAO will request of the Purchasing Agent that the proposal be determined non-responsive.

The Review Board shall then score all proposals based upon the evaluation factors detailed herein. Upon completion of the scoring, the panel may recommend "short listing" the proposals that are potentially acceptable and are in the "competitive range."

At this point, Metro may request oral presentations, clarifications, additional discussions, amended proposals, best and final offers, and/or conduct detailed reference checks of the Offerors on the "short list." Metro reserves the right to contact any and all references to obtain, without limitation, information regarding the Offeror's performance on previous projects.

As a result of further review of the short-listed proposals and in consideration of the additional information received through discussions and written submittals as described above, the Review Board may adjust the scores of the short-listed proposals upward or downward. At the conclusion of this final evaluation, the panel will forward its recommendation to the Purchasing Agent for the final selection.

Should the Purchasing Agent accept the recommendation he/she will submit the firm to the Finance Director or, if not, return it back to the Review Board with instructions for additional consideration. Should the Finance Director accept the recommendation he/she will submit the firm to the Mayor or, if not, return it back to the Review Board with instructions for additional consideration.

Should the Mayor accept the recommendation he/she will communicate the selection to the Purchasing Agent to begin the contract negotiation process or, if not, return it back to the Review Board with instructions for additional consideration. Once the selection of the firm has been made, the Purchasing Agent, or designee, will lead a team (including departmental participants) in negotiating a contract/agreement with the selected firm for the services at compensation which is determined by the Director of Finance to be fair and reasonable to Metro.

Metro reserves the right to withdraw this RFP at any time for any reason and to issue such clarifications, modifications, and/or amendments, as it may deem appropriate. Receipt of a proposal by the Division of Purchases or a submission of a proposal to Metro offers no rights upon the Offeror nor obligates the Metropolitan Government in any manner.

Metro reserves the right to waive minor irregularities in proposals, provided that such action is in the best interest of the Metropolitan Government. Any such waiver shall not

modify any remaining RFP requirements or excuse the Consultant from full compliance with the RFP specifications and other contract requirements if the Consultant is issued a contract.

E. Ambiguity, Conflict or Other Errors in the RFP

If an Offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposals, it shall immediately notify the Division of Purchases of such error in writing and request modification or clarification of the document. The Division will make modifications by issuing a written revision and will give written notice to all parties who have received this RFP from the Division of Purchases.

The Offeror is responsible for clarifying any ambiguity, conflict, discrepancy, omission or other error in the Request for Proposals prior to submitting the proposal, or it shall be waived.

F. Proposal and Presentation Costs

The Metropolitan Government will not be liable in any way for any costs incurred by any Offeror in the preparation of its proposal in response to this RFP, nor for the presentation of its proposal and/or participation in any discussions, negotiations or protests.

G. Rejection of Proposals

The Metropolitan Government reserves the right to accept or reject, in whole or in part, any, or all, proposals submitted. The Division of Purchases shall reject the proposal of any Offeror that is determined to be non-responsive. The unreasonable failure of an Offeror to promptly supply information in connection with, or with respect to, reasonable requests may be grounds for a determination of non-responsibility.

H. Acceptance of Proposals

The Division of Purchases shall accept all proposals that are submitted properly. However, Metro reserves the right to request clarifications or corrections to proposals.

I. Requests for Clarification of Proposals

Requests by Metro for clarification of proposals shall be in writing.

J. Validity of Proposals

All proposals shall be valid for a period of **120 days** from the submission date.

K. Proposal Evaluation Panel and Evaluation Factors

The factors to be considered by the Review Board in the evaluation of the proposals are listed below. While Metro believes all of these items to be of importance, they are ranked in descending order of importance with **weights indicated**. Within each subjective evaluation factor, sub-factors for the criterion will be defined to clarify the point distribution for that factor.

- Experience on Similar Projects, Tab IV **(35 Points)**
- Proposed Business Plan, Tab V **(30 Points)**
- Capacity to Perform Work, Tab VI **(20 Points)**
- Assistance to Small Businesses as Subcontractors and Suppliers, Tab VII **(10 Points)**
- Volume of Work with Metro, Tab VIII **(5 Points)**

L. Response Format

The items listed below shall be submitted with each proposal and should be submitted in the order shown. Each section should be clearly labeled, with pages numbered and separated by tabs. Failure by an Offeror to include all listed items may result in the rejection of its proposal.

- **Tab I, Cover Letter**

Provide a cover letter indicating your firm's understanding of the requirements of this Request for Proposals. The letter should be a brief formal letter from the Offeror that provides information regarding the firm's interest in and ability to perform the requirements of this RFP.

A person who is authorized to commit the Offeror's organization to perform the work included in the proposal must sign the letter. The cover letter should be on letterhead and state the legal name of the firm, phone number, fax number, mailing address and e-mail address.

Note: In order to expedite the completion of the evaluation process, Offerors should list the name, address, phone number, fax number, and e-mail address of the person capable of answering any questions that may arise regarding their proposal in their cover letter.

- **Tab II, Acceptance of Conditions**

Indicate any exceptions to the terms and conditions of the RFP, the Contract/Agreement, or the Scope of Work. Include a copy of all amendments issued to the RFP.

Note: Any Offeror's listing of exceptions in its proposal in no way obligates Metro at any time to change the conditions of its RFP. Exceptions may be unacceptable to Metro and may be cause for rejection of an Offeror's proposal, or for reduction in the scoring.

- **Tab III, Minimum Qualifications**

Offerors must demonstrate the following **minimum qualifications** in their proposal in order to be considered for this project:

- ☐ Specific qualifications of the firm
- ☐ Staffing schedules of existing projects
- ☐ List of affiliations:
 - ☐ - Firms with whom the prime may associate
 - ☐ - Small and Disadvantaged Business associates
- ☐ Small and/or Minority Business utilization plans

- ☐ Firm's present financial condition
- ☐ List of current litigation in which the firm is a defendant
- ☐ List of employee licensing violations (past five years)

Note: All proposals submitted are public record after an award is made. Submission of a proposal shall constitute an official waiver of any confidentiality statements.

• **Tab IV, Experience on Similar Projects (35 Points)**

Experience and qualifications of the firm (including sub-consultants) to produce the desired outcomes (including its ability, skill and number of years experience in providing the required services); the various firms' successful experience in working on previous projects similar in size and scope and with similar agencies (including, but not limited to, the ability of the firm to deliver projects within established schedules and budgets) shall be submitted.

Provide information that documents your firm's **overall qualifications** to produce the required outcomes, including its ability, capacity, skill and familiarity with Metro codes and regulations

Each Offeror should include here the name, telephone number and e-mail address of the project manager (or other contact person if the project manager is no longer available) for all jobs of **similar size and scope** performed by the firm/team within the **past five (5) years**. Information provided for each job reference shall include:

- ☐ Project name, geographical location and prime Architect/Engineer (if any)
- ☐ Agency/department/office for which performed
- ☐ Dates of project
- ☐ Owner's project manager or other representative
- ☐ Contact person
- ☐ Type of project (Planning, Design or Design/Build)
- ☐ Dollar value of A/E contract
- ☐ Dollar value of total construction

The Metropolitan Government reserves the right to contact any and all references and to obtain the following information, without limitation, regardless of Offeror's performance on the listed jobs. A uniform sample of references will be checked for each short-listed Offeror (team), using the prepared list of questions below:

Questions

- ☐ Was the Offeror thorough in coordination efforts required with other team members and with the Owner?
- ☐ Was the Offeror familiar with technologies and applications for dealing with the issues?
- ☐ How well was the project managed?
- ☐ How well did the Offeror meet their schedules and budgets?
- ☐ How cooperative and responsive was the Offeror?
- ☐ How adequate were the briefings, submittals and presentations?
- ☐ How competent and professional was the Offeror, and other key personnel?
- ☐ Were the Offeror's small business commitments, if any, for the project fulfilled?

- ☐ Would you hire the Offeror again for another planning/design project?

Proposals will be scored on a scale of 1 to 10, with 10 being the highest possible score, in order to determine a portion of the score for this evaluation factor. Failure to provide complete and accurate information as to experience may result in Metro instituting debarment proceedings against the Offeror and/or termination proceedings against any contract that has been so awarded.

In accordance with the revised Procurement Regulations, the **sub-factors** on which the proposals will be **evaluated (scored)** under this criterion are as follows:

- ☐ Experience as a team
- ☐ Experience on similar projects
- ☐ Experience with similar agencies, including Metro
- ☐ Unique and relevant experience
- ☐ Performance evaluation from Metro and other clients (references)

- **Tab V, Proposed Business Plan (30 Points)**

Describe in detail how this project will be approached, including major tasks and sub-tasks to be accomplished. Provide a list of the proposed sub-consultants for this project.

Include the members of the proposed contract team by name, the role to be played by each member of the team and how the team will be organized and managed. An **organization chart** should be provided to demonstrate team relationships.

Consultant shall provide a single point of contact (Project Manager) designated in writing to coordinate all activities of the Consultant, and this point of contact may only be changed with Metro's permission.

Include a **schedule of completion** for the project, indicating major tasks and sub-tasks to be accomplished in both the planning and design phases. The schedule should show how long each phase will take, including internal review periods and community review periods.

In accordance with the revised Procurement Regulations, the **sub-factors** on which the proposals will be **evaluated (scored)** under this criterion are as follows:

- ☐ Understanding project requirements
- ☐ Team and project management
- ☐ Specific project manning schedule for this project
- ☐ Firm's ability to complete the project on schedule
- ☐ Firm's awareness of design opportunities and constraints

- **Tab VI, Capacity to Perform Work (20 Points)**

Offeror shall list the number of full-time professional employees and disciplines for their Nashville Office and provide another list for their offices in other locations that may be drawn upon for this contract. Key personnel of sub-consultants shall also be listed.

Information regarding the specialized expertise of proposed "key" individuals who will be used on this project, including for each such individual his/her name and position for the

project, shall be submitted. **Resumes** for such persons, including sub-consultants, for each required discipline should be included. For the Project Manager, list the Tennessee professional registration number and expiration date.

The proposal shall also indicate the availability of proposed team members to complete this project in a timely, efficient and quality manner.

In accordance with the revised Procurement Regulations, the **sub-factors** on which the proposals will be **evaluated (scored)** under this criterion are as follows:

- ☐ Team and personnel qualifications
- ☐ Firm's availability of qualified personnel to complete the project
- ☐ Degree to which work will be performed locally

- **Tab VII, Assistance to Small Businesses as Subcontractors and Suppliers (10 Points)**

List proposed Small Businesses (as defined in Metro's **Small Business Standards, Attachment B**) to be involved in key roles, either as the Offeror itself or as sub-consultants. Briefly describe, for each, its role and indicate the **minimum percentage** of work anticipated to be performed by each firm.

The **List of Proposed Small Businesses (Attachment C)** must be completed and signed by a company officer empowered to bind the Offeror to the provisions in this RFP and any contract awarded pursuant to the RFP. The Offeror must submit the **List of Proposed Small Businesses** OR a Statement that no small businesses are proposed.

- **Tab VIII, Volume of Work with Metro (5 Points)**

An important goal of the selection process is the equitable distribution of consulting work among the best-qualified firms. The proposal shall list all contracts by the Offeror (**prime only**) with Metro departments or agencies (i.e., Planning Commission, MTA, MDHA, MNAA, MNPS, NES, etc.) as a prime or sub-consultant over the **past three (3) years**. **Total fees** actually received for each contract during this period also shall be listed. Fees paid to sub-consultants may be deducted from the totals. This evaluation factor will be scored in **inverse order** to the total amount of fees received.

A table similar to the one shown below should be used for this tab:

<u>Project/Contract</u>	<u>Dept./Board/Com.</u>	<u>Project Cost</u>	<u>Year(s)</u>	<u>A/E Fee Rec.</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
TOTALS		_____	_____	_____

- **Tab IX, Procurement Non-Discrimination Program Requirements**

The **Statement of Good Faith Efforts (Attachment D)** is required at the time of proposal submission. Each of the first three listed statements must be initialed by an authorized company official indicating that the Offeror has made all of the good faith efforts required by the Procurement Non-Discrimination Program. Offerors should also initial any of the additional good faith efforts listed subsequently on the form as they are applicable.

Each Offeror must provide the **Statements of Interested, Notified and Successful Subcontractors (Attachment D)** indicating that the Offeror has delivered written notice to **at least three (3)** available MWBEs if use of MWBEs is reasonable and if BAO can provide at least three MWBEs for the applicable category. The interested, notified, successful and unsuccessful bid prices are one of the several required responses on the form.

- **Tab X, Ethical Standards Affidavit**

The prospective Contractor shall supply a notarized **Affidavit (Attachment E)** with their proposal certifying compliance with all laws including having the necessary business licenses, payment of all gross receipts taxes, and payment of all personal property taxes. If such prospective Contractor fails to supply the Affidavit, the proposal may be determined to be non-responsive.

- **Tab XI, Appendices**

The content of this tab is left to the Offeror's discretion. However, the Offeror should limit materials included here to those that will be helpful to Metro in understanding the services to be provided under this contract.

**AGREEMENT BETWEEN
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
AND**

_____ (CONSULTANT)

AGREEMENT NO.: _____

THIS AGREEMENT, made and entered into this ____ day of _____, 20____, by and between The Metropolitan Government of Nashville and Davidson County (hereinafter called METRO) and _____(hereinafter called Consultant), containing the following: Exhibit A to Agreements Between Metro and Consultants; Exhibit B titled ACH Form for Electronic Payment; Exhibit C titled Fee Schedule.

WITNESSETH THAT:

WHEREAS, pursuant to Ordinance No. 092-210, Procurement Code, regulations were adopted by the Procurement Standards Board and were approved by the Mayor for the selection of architectural and engineering firms to complete professional design services on a project by project basis; and

WHEREAS, pursuant to Ordinance No. 092-210, Procurement Code and Ordinance No. 085-885 as amended and Ordinance No. 086-1176 as approved by the Mayor, the Architectural and Engineering Review Board has reviewed qualification statements submitted by qualified architectural/engineering firms and has recommended to the Mayor one firm for selection as the Consultant for various architectural/engineering services on a project by project basis to be assigned by the Department of _____, and the Mayor has approved _____ as a Consultant, and,

WHEREAS, Ordinance No. 085-885, as amended, authorized the Metropolitan Government of Nashville and Davidson County, Tennessee, Mayor to execute and enter into, on behalf of the Metropolitan Government, professional services agreements upon the recommendation of the Architectural and Engineering Review Board.

ARTICLE 1 - SCOPE OF WORK

Consultant shall perform all necessary professional services in a satisfactory and proper manner, consistent with Metro's requirements for the Project generally described as follows:

Project Name: Master Planning and Design Services for Fairgrounds Park

Project No.: RFP No. 10-159

All Work shall be performed in accordance with the requirements of **EXHIBIT A TO AGREEMENTS BETWEEN THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY AND CONSULTANTS**, as revised, and by this reference made a part hereof. The scope of services included in this Agreement is described as follows:

A. PLANNING PHASE:

(See RFP Section 1.C., Scope of Services)

B. DESIGN PHASE:

(See RFP Section 1.C., Scope of Services)

C. CONSTRUCTION PHASE:

(See RFP Section 1.C., Scope of Services)

Additional scope of services may be negotiated and added to Agreement by Amendment to the Agreement.

ARTICLE 2 - FEE

Consultant agrees to perform all Work described as the scope of services in **ARTICLE 1 - SCOPE OF WORK**, all for a maximum fee not to exceed _____, (\$ _____) with no minimum fee guaranteed.

Fees for additional services may be negotiated and added to Agreement by Amendment to the Agreement.

Metro requires as a condition of this Agreement that the Consultant shall complete and sign Metro's form authorizing electronic payments to the Consultant, attached hereto as Exhibit B.

ARTICLE 3 - HOURLY RATES

Consultant's hourly rates are set forth in the Fee Schedule attached hereto as Exhibit C and incorporated herein by reference. The hourly rates shown in Consultant's Fee Schedule include all profit and overhead.

ARTICLE 4 - DIRECT EXPENSES

Allowable direct expenses, at actual cost with no multiplier or overhead added, include:

- Reproduction of drawings and maps
- Printing (reports only)
- Equipment and supplies (unique to this contract)
- Vehicular use at the current mileage rate allowed by Metro Travel Regulations
- Approved subcontracted services (no markup allowable on sub-consultants)

ARTICLE 5 - METRO DEPARTMENT ASSIGNMENT

This Project has been assigned by the following Department of The Metropolitan Government of Nashville and Davidson County: _____.

ARTICLE 6 - CONTRACT DESIGNEES

Except where otherwise provided herein, any notice, approval, acceptance, request, bill, demand, or statement hereunder from either party to the other shall be in writing and shall be deemed to have been given when either delivered personally or deposited in a U. S. Mail Box in a postage prepaid envelope, addressed to the other party at (unless changed by written notice):

Metro:

Phone No.: _____
Fax. No.: _____

Consultant:

Phone No.: _____
Fax. No.: _____

with copies to:

_____, Director
Metro Department of ____

Jeff L. Gossage
Purchasing Agent
Metro Department of Finance
P.O. Box 196300
Nashville, TN 37219-6300

Consultant designates the following as the Consultant's agent for service of process and will waive any objection to service of process if process is served upon this agent:

Agent's Name: _____

Company: _____

Address: _____

City, State, Zip Code: _____

Telephone: _____

Fax: _____

E-mail: _____

ARTICLE 7 - INSURANCE

Without limiting its liability hereunder, Consultant shall maintain, during the life of this Agreement, the following insurance and furnish Metro, in duplicate, Certificates of Insurance on an Acord Certificate as evidence thereof. The Certificate shall plainly designate the name of the Project for which the Certificate is provided, and The Metropolitan Government of Nashville and Davidson County must be named as an Additional Insured as well as Certificate Holder.

A: WORKER'S COMPENSATION INSURANCE:

Providing coverage in compliance with the laws of the state in which any part of the Work is to be performed, and Employer's Liability Coverage in the minimum amount of the Statutory Limit for each occurrence.

B: COMPREHENSIVE (COMMERCIAL) GENERAL LIABILITY INSURANCE:

Bodily injury and property damage combined single limit in the minimum amount of \$1,000,000 for each occurrence.

C: AUTOMOBILE (BUSINESS) LIABILITY INSURANCE:

Bodily injury and property damage combined single limit in the minimum amount of \$1,000,000 for each occurrence, \$1,000,000 aggregate.

D: CONSULTANT'S PROFESSIONAL LIABILITY INSURANCE:

Consultant shall provide professional liability insurance covering claims arising from errors, omissions or negligent acts committed in the performance of professional services under this contract with limits of \$1,000,000. The Comprehensive General Liability Insurance referred to in this Section, paragraphs B and C above, shall include broad form Contractual Liability Coverage for the liability assumed by Consultant in **EXHIBIT A** to this Agreement, SECTION VII, TERMS AND CONDITIONS, Paragraph H (Indemnification).

E: CONSULTANT'S CERTIFICATE:

Consultant's Certificate (Acord) shall include:

1. The name and address of Certificate Holder, and Additional Insured, as The Metropolitan Government of Nashville and Davidson County, c/o Division of Insurance and Risk Management, Metro Courthouse, 1 Public Square, Suite 108, Nashville, TN 37201.
2. The Contractual Insurance coverage is on a Blanket Broad Form basis unless specifically indicated.

3. The company or companies, upon request, agree to deliver within fifteen (15) days a certified copy of any and/or all of the policies of insurance to The Metropolitan Government of Nashville and Davidson County.
4. If one (1) or more Umbrella Excess policies are used there is no gap between the limits of the primary policies and the deductible features of the Umbrella Excess policies.
5. Coverage under the primary policies have no deductible features unless there is a check mark here (). If there are deductible features or the insured has adopted a funded self-insurance program, they are fully explained on an attached sheet which becomes a part of this Certificate.
6. The coverage provided shall not be canceled, reduced in coverage or allowed to lapse unless and until The Metropolitan Government of Nashville and Davidson County receives at least thirty (30) day advance notice of same. Said written notice must be delivered to the Metropolitan Risk Manager at his/her office shown as the address of the Certificate Holder above or the secondary Certificate Holder, if one is listed on the Certificate of Insurance.

IN WITNESS WHEREOF, this Agreement is entered into as of the date set forth above.

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

APPROVED AND RECOMMENDED:

Director, Board of Parks and Recreation

APPROVED AND RECOMMENDED:

Metropolitan Purchasing Agent

APPROVED AS TO AVAILABILITY OF FUNDS:

Director of Finance (or Designee)

APPROVED AS TO FORM AND LEGALITY:

Metropolitan Attorney

Director, Division of Insurance and Risk Management

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

Karl F. Dean, Mayor

ATTEST:

This _____ day of _____, 20__

Metropolitan Clerk

(Consultant)

By _____

Title _____

FUND NAME

FUND NO.

OBJECT CODE

CIB NO.

No funds are committed by execution of this document. All work to be performed will be authorized by duly issued purchase orders.

**EXHIBIT A
TO
AGREEMENTS BETWEEN
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
AND
CONSULTANTS**

SECTION I - CONSULTANT'S RESPONSIBILITIES

A: PROFESSIONAL SERVICES:

Consultant shall perform all necessary professional services in connection with the Project in a satisfactory and proper manner, consistent with the Metropolitan Government's requirements.

B: DESIGN:

Consultant under the Agreement shall furnish design services, as appropriate, including all planning, surveying, geotechnical investigations, studies, engineering, legal descriptions including all necessary easements, and cost estimating in accordance with a work program, referred to as the Scope of Design Services as follows:

SCOPE OF DESIGN SERVICES:

- 1:** The scope of design services for the Project to be designated by Metro during the term of agreements shall include but are not limited to the following:

PLANNING PHASE:

- a. Preparation of studies, evaluations, reports, exhibits and programs.
- b. Preparation of concept designs.

DESIGN PHASE:

- c. Preparation of construction documents including any/all drawings, specifications, and details necessary for construction contract purposes.
- d. Preparation of detailed construction cost estimates.
- e. Review and recommendations of studies, evaluations, reports, and construction documents for completeness, technical adequacy and optimum construction feasibility and economy.
- f. Assistance in the bid process. (Prepare addenda, review bids, tabulate bids, recommend award).

CONSTRUCTION PHASE:

- g. Review of shop drawings, product data, samples or other construction contractor submittal for approval of recommendation for any other appropriate action.
 - h. Provide construction monitoring (engineering and inspection) services.
 - i. Assemble project close out documents.
- 2: It will be incumbent upon Consultant to ensure that all services are performed using prudent architectural and engineering practices in accordance with the latest Codes and Regulations, and any other applicable design standards.
- 3: If Metro orders changes or alterations in the Work to be performed hereunder by Consultant, Metro will hold a scoping conference to outline the change in services to be assigned to Consultant. Consultant shall, within a reasonable time, but not in excess of seven (7) business days, following the scoping conference, provide a written proposal which shall include a description of the services to be provided, proposed time for completion, personnel to be employed on the assignment and a detailed derivation of the proposed price. The price shall be the product of the agreed number of hours required for performance of the assignment and the appropriate hourly rates for the disciplines involved, as set forth in Consultant's Fee Schedule.
- 4: Consultant has proposed a not to exceed maximum fee with the understanding that Consultant shall perform all tasks and work necessary and incidental to bring the work to the appropriate level of completion as mutually agreed upon.
- 5: Consultant shall maintain an adequate staff to provide the services required herein in the professional quality and timeliness mutually agreed upon. Failure to maintain an adequate staff may be cause for termination for default. Only sub-consultants listed in the submittal may be employed in this work. Substitute sub-consultants may only be used with the prior notice and written approval of Metro's Division of Purchases.
- 6: Metro and Consultant will mutually agree upon the work schedule for this project. The failure of Consultant to satisfactorily complete work assigned within the time specified wherein Metro has given notice that the completion date is critical to Metro, may be cause for termination.
- 7: All documents which are prepared by Consultant and form a part of his/her services shall, upon completion of the drawings, become the property of Metro and shall be delivered to the Department of Metro as assigned in Article 5 of the Agreement. Consultant shall be responsible for the protection and/or replacement of any Contract Document in his/her possession. Metro shall receive all original drawings and Consultant shall retain reproducible copies. Such documents shall not to be used by either party on any subsequent project, except as reference materials.

- 8: Metro will furnish all information, data, reports and maps as are existing and identified by Consultant that are available to Metro without significant cost and that are necessary for the carrying out of the work. Metro will cooperate with Consultant in every way possible in the carrying out of the planning work, providing, however, that the needs of Consultant for each support are made known to Metro.
- 9: Metro will not provide clerical assistance to Consultant for the Project, and Metro personnel will not be asked to undertake surveys, analyses, tabulations, summaries, etc. of Consultant produced data or documentation.
- 10: Metro may conduct reviews and provide comments on drawings and specifications at the normal event times, i.e., schematics, design development, thirty percent (30%), sixty percent (60%) construction documents, ninety percent (90%) construction documents, one hundred percent (100%) construction documents. Five (5) sets of each shall be provided by Consultant at normal events. Review points will be established with each task assigned.
- 11: Any work assignment in which it is necessary for Consultant to obtain site surveys, soil borings, and soil reports, will be requested by Consultant to be provided by Metro to Consultant.
- 12: Consultant shall deliver to Metro the originals of the drawings, plans and specifications complete and ready for reproduction, along with ten (10) Bidding sets. Reproduction of additional Bidding sets will be by Metro and at Metro's expense.
- 13: Metro's acceptance of required studies, reports, designs, etc. shall not relieve Consultant from the obligation to correct any defective work, whether previously or subsequently noted, and all incomplete, inaccurate or defective work shall be remedied by Consultant on demand and at no cost to Metro. Defective work may be defined but not limited to such matters as erroneous tabulations, incomplete surveys, maps, or reports, and incorrectly assembled reports, plans, specifications, etc., which is caused by error or omission after the final delivery of work assignment by Consultants.
14. In connection with its work on the project, Consultant shall not discriminate against any person on the basis of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, state, or local law. Consultant shall post at its regular place of business a notice to its employees and applicants that it subscribes to this policy of non-discrimination.

C: CONSTRUCTION MONITORING:

Upon award of the Construction Contract for the Project, Consultant, by mutual consent of and upon written authorization by Metro as provided in this Exhibit A, SECTION VII, TERMS AND CONDITIONS, Paragraph C. Modification of Contract, shall provide

construction monitoring and review of construction progress in accordance with a work program referred to as the Scope of Construction Monitoring Services, as follows:

SCOPE OF CONSTRUCTION MONITORING SERVICES:

1: CONSULTANT STATUS DURING CONSTRUCTION:

Consultant will be Metro's representative during the construction period. The duties and responsibilities and the limitations of authority of Consultant as Metro's representative during construction are set forth in the Agreement and shall not be extended without written consent of Metro.

2: SITE VISITS:

Consultant shall visit the project site no less frequently than weekly and in any event with sufficient frequency to become familiar with the progress and quality of the Work and to determine compliance of the Work with: (1) the Contract Documents; (2) the schedule for construction and (3) applicable laws, statutes, building codes, rules and regulations of public authorities having jurisdiction over the work. Each on-site inspection shall be conducted by an experienced and qualified Consultant representative who is knowledgeable about the project and competent in the disciplines having trade activities in progress at the same time of the inspection. Consultant shall promptly report in writing to Metro the results of each inspection, including defects and deficiencies in the work, and shall recommend to Metro appropriate corrective action, if any is required.

If determined by Metro that full time or part time on-site Detailed Inspection of the Work is required by Consultant in order to assure that the Project is constructed in accordance with the Contract Documents, compensation for the Detailed Inspection shall be as stipulated in Article 3 - Hourly Rates of the Agreement for Detailed Inspection.

3: CLARIFICATIONS AND INTERPRETATIONS:

Consultant shall within seven (7) calendar days after receipt, and in accordance with all Project schedule requirements, review, certify, approve, reject, or take other appropriate action on, and return all submittals such as shop drawings, product data and samples.

Consultant shall not approve any such submittals unless they conform to: (1) the project design concept; (2) the Contract Documents; and (3) the project budget.

4: AUTHORIZED VARIATIONS IN WORK:

With Metro's approval, Consultant may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the

completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Authorization.

5: REJECTING DEFECTIVE WORK:

Consultant shall have authority and responsibility to disapprove or reject Work which Consultant believes to be defective, or Consultant believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

6: DETERMINATIONS FOR UNIT PRICE:

Consultant shall determine the actual quantities and classifications of Unit Price Work performed by Contractor. Consultant shall review with Contractor the preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application of Payment or otherwise).

7: DISPUTE ANALYSIS:

Consultant will be initial interpreter of the requirements of the Construction Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters from Contractor relating to the acceptability of the Work or the interpretation of the performance and furnishing of the Work and Claims with respect to changes in the Contract Price or Contract Times will be referred initially to Consultant in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by Contractor to Consultant and Metro promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to Consultant and Metro within sixty days after the start of such occurrence or event unless Metro allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. Metro will submit any response to Consultant and Contractor within thirty days after receipt of the Contractor's last submittal (unless Metro allows additional time). Additional dispute analysis provisions may be incorporated into the Construction Contract Documents (such as Principles of Partnering, Dispute Review Board, etc.) which will supplement or supersede some of the provisions of this paragraph.

8: LIMITATIONS ON CONSULTANT'S AUTHORITY AND RESPONSIBILITIES:

Neither Consultant's authority or responsibility under this Section or under any other provision of the Construction Contract Documents nor any decision made by Consultant in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by Consultant shall create, impose or give rise to any duty owed by Consultant to Contractor, any Subcontractor, any Supplier, any other person or organization, or to any surety for or

employee or agent of any of them. However, Consultant will be responsible to Metro for all decisions made of their own accord.

9: WORKSITE SUPERVISION:

Consultant shall not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the furnishing or performance of the Work, except as provided for the in the Construction Contract Documents.

10: ACTS OR OMISSIONS BY THE CONTRACTOR:

Consultant will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

11: REVIEW OF FINAL APPLICATION FOR PAYMENT:

Consultant's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by the construction contract will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

12: LIMITATIONS:

The limitations upon authority and responsibility set forth in this Section shall also apply to Consultant's Sub-consultants and assistants.

SECTION II - THE METROPOLITAN GOVERNMENT'S RESPONSIBILITIES

Metro will provide all criteria and full information as to the Project's requirements, and shall furnish the following:

- A. Provide the Consultant with all known available information which is pertinent to the Project.
- B. Guarantee access to the Work so Consultant can enter upon public and private lands as required to perform work essential to design the Project.
- C. Give thorough consideration to all reports, cost estimates, drawings, specifications, and other documents presented by Consultant and inform Consultant of all decisions within a reasonable time so as not to delay the work of Consultant.

- D. Promptly schedule all required special meetings, serve all public and private notices, receive and act upon all protests.
- E. Designate, in writing, a single person to act as Metro's representative.
- F. Provide all activities associated with property acquisition and/or relocation, including, but not limited to, appraisals, title search, and required legal services.
- G. Give prompt written notice to Consultant when it is known that either the Project criteria or conditions have changed, or Consultant's work is deficient in intent or technical content.
- H. Provide information previously assembled by others including soil borings, probings, and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, and materials, appropriate professional interpretation of all of the foregoing, environmental assessment, and impact statements, approvals and permits from regulatory agencies, and other special data or consultation.

SECTION III - COMPENSATION AND PAYMENT

In consideration for the Services to be performed by Consultant under the Agreement, Consultant shall be entitled to receive payment in the amount of the sum of the products of the total number of hours of work under the Agreement by each discipline and the applicable hourly rates for those disciplines, as set forth in Consultant's Fee Schedule, provided, however, that Consultant shall not be entitled to receive more than the maximum fee set forth elsewhere in this Section III.

A: HOURLY RATES:

Consultant's hourly rates of personnel assigned to the Project shall be as indicated in the Agreement, Article 3 - Hourly Rates.

B: DIRECT EXPENSES:

Allowable direct expenses shall be as indicated in the Agreement, Article 4 - Direct Expenses, at actual cost with no multiplier or overhead added, including:

- . Reproduction of drawings and maps
- . Printing (reports only)
- . Equipment and supplies (unique to this project)
- . Vehicular use at the current mileage rate allowed by Metro Travel Regulations
- . Approved subcontracted services (no markup on sub-consultants)

C: TOTAL FEE:

Consultant agrees to accomplish all work described in the Agreement, Article 1 - Scope of Work, in accordance with this Exhibit A, Section V, TIME OF COMPLETION, all for a

maximum fee not to exceed the fee stated in Article 2 - Fee of the Agreement, with no minimum fee guaranteed.

D: MAXIMUM FEE:

Consultant shall deliver all the work required herein for the maximum fee stated above and shall not obligate Metro hereunder in excess of that amount without Metro's prior written approval as provided in this Exhibit A, Section VII, Terms and Conditions, Paragraph C, Modification of Contract.

E: INVOICES:

Consultant may present its invoice monthly for actual work performed and cost incurred in this Exhibit A, Section I - Consultant's Responsibilities, Section I to Metro on a monthly basis. The monthly invoice will contain a status report for each phase of the Project.

F: WITHHOLDING OF SALARIES:

If, in the performance of the Agreement, there is any underpayment of salaries by Consultant or by any Sub-consultant thereunder, Metro will withhold from Consultant out of payments due to him, an amount sufficient to pay to underpaid employees. This amount shall be established by the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amount withheld shall be disbursed by Metro to the respective employees to whom it is due, for and on account of Consultant or Sub-consultant.

SECTION IV - CHANGES IN WORK

Metro reserves the right, and may from time to time, without impairing the Agreement, order changes or alterations in the work to be performed hereunder by Consultant.

A: CHANGES IN SCOPE:

If the changes or alterations ordered affect the cost or progress of the work, appropriate adjustments shall be made in the time for performance of the work and compensation owing to Consultant, as provided in this Exhibit A, Section VII, Terms and Conditions, Paragraph C. Modification of Contract.

B: COMPENSATION:

Changes in the work shall be compensated on the same basis as stipulated in Section III of this Agreement. Consultant shall agree to accomplish the extra work for a maximum fee, negotiated prior to performing any extra work.

C: CHANGES IN HOURLY RATE OF CLASSIFICATION:

Changes in the Hourly Rate of Classification will not be considered.

SECTION V - TIME OF COMPLETION

A: SCHEDULE:

Consultant shall perform work required according to the schedule outlined in the assignment under this contract. Each phase of work will begin with a separate notice to proceed.

SECTION VI - STANDARDS

A: DESIGN STANDARDS:

Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished under the Agreement. Consultant's services shall be performed with the same skill and care which would be exercised by a qualified professional design consultant performing similar services. All aspects of professional services shall be performed or supervised by a licensed architect or engineer who is registered in the State of Tennessee. The seal of that architect or engineer shall be affixed to all related documentation which includes, but is not limited to the following: construction plans, engineering studies and reports. All aspects of required surveying services shall be performed or supervised by a registered land surveyor who is registered in the State of Tennessee. The seal of that land surveyor, shall be affixed to all related documentation which include, but is not limited to the following: boundary survey, right-of-way survey, legal description, topographical survey, and surveys related to construction.

B: APPLICABLE DESIGN SPECIFICATIONS:

In general, designs as they apply to the Project shall conform to the current edition requirements of:

- AASHTO Policy on Geometric Design of Highways and Streets;
- Metropolitan Government's Subdivision Specifications for Streets and Roads;
- Tennessee Department of Transportation Standard Specifications for Road and Bridge Construction, Current edition, as amended;
- Manual on Uniform Traffic Control Devices;
- Metropolitan Fire Code;
- Design Criteria for Water Works; Tennessee Department of Health & Environment;
- Design Criteria for Sewerage Work; Tennessee Department of Health & Environment;
- Stormwater Management Regulations for Metropolitan Nashville;
- Southern Building Code (SBC);
- Metropolitan Building Codes- Electrical, Mechanical, Plumbing;
- Americans with Disabilities Act (ADA);
- Occupational Safety and Health Administration;
- National Fire Protection Association;
- Normally accepted construction practices;
- Metro Department of Water & Sewerage Standards; and

-Any other applicable Codes and Design Standards.

C: ERRORS AND DEFICIENCIES:

Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. Neither Metro's review, approval or acceptance of, nor payment for, the services required under the Agreement shall be construed to operate as a waiver of any rights under the Agreement or of any cause of action arising out of the performance of the Agreement, and Consultant shall be and remain liable to Metro in accordance with applicable law for all damages to Metro caused by Consultant's negligent performance of any of the services furnished under the Agreement. The rights and remedies of Metro provided for under the Agreement are in addition to any other rights and remedies provided by law.

D: CONFLICT RESOLUTION:

If there is a conflict with any practice or standard referenced in this section, Consultant shall request in writing to the Director of the Department that has assigned the Project (as indicated in the Agreement, Article 5 - Metro Department Assignment) for a resolution by the Director.

E: DESIGN CHANGES:

Should any change in requirements be necessary the designee of Metro will notify Consultant's designee, in writing.

F: AMERICANS WITH DISABILITIES ACT

Consultant shall assure to Metro that all services provided through this contract shall be completed in full compliance with the Americans with Disabilities Act ("ADA") and Architectural and Transportation Barriers Compliance Board, Federal Register 36 CFR Parts 1190 and 1191, Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; proposed rule, published in the Federal Register on July 23, 2004, as has been adopted by Metro.

Consultant will ensure that participants at public meetings with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

SECTION VII -TERMS AND CONDITIONS

The following shall be essential terms and conditions of the Agreement:

A: TERMINATION:

Metro shall have the right to terminate the Agreement with or without cause. In the event Consultant fails to comply with any provisions of the Agreement, or if the progress or quality of the work is unsatisfactory, Metro may serve written notice thereof upon Consultant, and if Consultant fails within a period of ten (10) days thereafter to correct failure, Metro may terminate the Agreement upon written notice to Consultant. Upon such termination, Consultant shall immediately cease its performance of the Agreement and shall deliver to Metro all completed or partially completed satisfactory work, and Metro shall determine and pay to Consultant the amount due for such satisfactory work.

Metro also reserves the right to terminate the Agreement for its convenience or in the event it shall abandon or indefinitely postpone the Project. Such terminations shall be accomplished by written notice to that effect delivered to Consultant. Upon receipt of such notice, Consultant shall immediately cease work and deliver to Metro within 30 days all completed or partially completed work. Payment to Consultant shall be made for work performed prior to receipt by the Consultant of such termination notice, together with Consultant's cost for closing down its work, and Consultant shall have no claim for loss of anticipated profits or any additional compensation.

In the event Metro fails to substantially comply with the provisions of the Agreement, or if it fails to timely pay compensation due to Consultant, Consultant may serve written notice thereof upon Metro, and if Metro fails within a period of ten (10) days thereafter to correct such failure, Consultant may terminate the Agreement upon written notice to Metro. Upon such termination, Consultant shall cease its performance of the Agreement, and when paid the amount due for such work, shall deliver to Metro all completed or partially completed work for the Project.

B: BREACH OF AGREEMENT:

If Consultant fails to fulfill in a timely and proper manner its obligation under the Agreement or if it shall violate any of the terms of the Agreement, Metro shall have the right to immediately terminate such contract and withhold payments in excess of fair compensation for work completed.

The term "breach of agreement" specifically includes, but is not limited to, failure to comply with any applicable federal, state or local laws or regulations. Notwithstanding the above, Consultant shall not be relieved of liability to Metro for damages sustained by virtue of any breach by Consultant.

C: MODIFICATION OF AGREEMENT:

The Agreement may be modified only by written amendment executed by all parties hereto.

D: PARTNERSHIPS/JOINT VENTURES:

The Agreement shall not in any way be construed or intended to create a partnership or joint venture between the parties or among any of the parties. None of the parties of the Agreement shall hold itself out in a manner contrary to the terms of the Agreement. No

party shall become liable for any representation, act or omission of any other party contrary to the terms of the Agreement.

E: WAIVER:

No waiver of any provision of the Agreement shall affect the right of Metro thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

F: NON-DISCRIMINATION:

Consultant shall affirm that it does not subscribe to any personnel policy which permits or allows for employment, promotion, demotion, dismissal or laying off of any individual due to his/her race, creed, color, national origin, age or gender or which is in violation of applicable laws concerning the employment of individuals with disabilities. It is the policy of the Metropolitan Government not to discriminate on the basis of age, race, sex, color, national origin or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services and activities. With regard to all aspects of this Agreement, Consultant certifies and warrants it will comply with this policy.

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

G: GRATUITIES AND KICKBACKS:

Gratuities:

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor.

Kickbacks:

It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of the Agreement, a breach of ethical standards which could result in civil or criminal sanctions and/or debarment or suspension from being a Consultant or Sub-consultant under Metro's contracts.

H: INDEMNIFICATION:

Consultant shall agree to indemnify and hold Metro, its officers, agents and/or employees harmless from and against any and all lawsuits, damages and expenses, including court costs and attorney's fees, by reason of any claim and/or liability imposed, claimed and/or threatened against Metro, its officials, agents and/or employees for damages because of bodily injury, death and/or property damages arising out of or in consequence of the performance of services under the Agreement to the extent that such bodily injuries, death and/or property damages are attributable to the negligence of Consultant and/or Consultant's officers, agents and/or employees.

Pursuant to Tennessee Attorney General Opinion 93-01, Metro will not indemnify, defend or hold harmless in any fashion the Consultant from any claims arising from any failure, regardless of any language in any attachment or other document that the Consultant may provide.

I: ASSIGNMENT-CONSENT REQUIRED:

The provisions of the Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Neither the Agreement nor any of the rights and obligations of Consultant hereunder shall not be assigned, subcontracted, or transferred in whole or in part without the prior written consent of Metro. Any such assignment, transfer or subcontract shall not release Consultant from its obligations hereunder. Any approved assignee shall assume each and every obligation of Consultant hereunder, and the Metropolitan Government may contract with or reimburse any such assignee without waiving any of its rights against the Consultant.

J: ENTIRE AGREEMENT:

The Agreement shall set forth the entire Agreement between the parties with respect to the subject matter hereof, and shall govern the respective duties and obligations of the parties until and unless a more formal Agreement is entered into between the parties.

K: FORCE MAJEURE:

No party to the Agreement shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by any act of God, force majeure, storm, fire, casualty, civil disturbance, riot,

war national emergency, act of government, act of public enemy or other cause of similar nature beyond its control.

SECTION VIII -MISCELLANEOUS PROVISIONS

The following shall be additional provisions of the Agreement:

A: OWNERSHIP OF DOCUMENTS:

Tracings, plans, specifications and maps prepared or obtained under the terms of the Agreement shall be delivered to and become the property of Metro. Basic design notes and sketches, charts, computations, all original drawings and other data prepared or obtained under the Agreement shall be made available, upon request, to Metro without restriction or limitation on their use.

B: REUSE OF DOCUMENTS:

Metro shall not reuse plans and specifications without Consultant's approval, which shall not be unreasonably withheld.

C: PROGRESS:

Consultant shall prepare progress schedules for the work and shall submit monthly progress reports based on such schedules to Metro.

D: PERSONNEL:

Consultant represents that he/she has or will secure at his/her own expense, all personnel required in performing the services under the Agreement. Such personnel shall not be employees of or have any contractual relationship with Metro. All services required hereunder will be performed by Consultant or under his/her supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

E: CLAIMS AND DISPUTES PERTAINING TO SALARY RATES:

Claims and disputes pertaining to salary rates or to classifications of architects, draftsmen, technical engineers and technicians performing work under the Agreement shall be promptly reported in writing by Consultant to Metro for the latter decision which shall be final with respect thereto.

F: INTEREST OF OTHER LOCAL PUBLIC OFFICIALS:

No members of the governing body of the locality in which the area of the Project is situated and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of the Project to which the Agreement pertains shall have any personal interest, direct or indirect, in this Agreement.

G: CONSULTANT'S ENDORSEMENT:

Consultant's endorsement shall be placed on the final report, cost estimates; also other data and documents furnished by Consultant to Metro.

H: CONTROL:

All work by Consultant is to be performed in a manner satisfactory to Metro and in accordance with the established customs, practices and procedures. The decision of Metro is to control in all questions regarding the work covered hereunder. Consultant is to periodically request sufficient conferences to insure that the work is being done by Consultant in a satisfactory manner and that all locations and work are made in accordance with the wishes of Metro.

I: ACCESS TO RECORDS:

Consultant shall maintain books, records, documents and other evidence directly pertinent to performance of work under the Agreement in accordance with accepted professional practice and appropriate accounting procedures and practices. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and formally established audit regulations, procedures and guidelines of the reviewing or audit agency.

J: CONTINGENT FEES STATEMENT:

Consultant hereby represents that Consultant has not been retained or retained any persons to solicit or secure a Metro contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

Breach of this paragraph is, in addition to a breach of the Agreement, a breach of ethical standards which could result in civil or criminal sanctions and/or debarment or suspension from being a Consultant or Sub-consultant under Metro Contracts.

K: GOVERNING LAW:

The validity, construction and effect of the Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee.

L: EFFECTIVE DATE:

The Agreement shall not be binding upon the parties until it is signed by their authorized signatories, filed in the Office of the Metropolitan Clerk and assigned an official Agreement Number.

M: DOCUMENT OF RECORD:

The Agreement is entered into subject to the Ordinances and Charter of the Metropolitan Government and is an Agreement entered into in the State of Tennessee.

N: CONFLICT OF INTEREST:

Consultant covenants that neither he nor any officer of the corporation or partner, if a partnership, has any interest, nor shall they acquire any interest, directly or indirectly, that would conflict in any manner or degree with the performance of the services set forth in the Agreement. Consultant further covenants that in the performance of the Agreement, no person having such conflict shall be employed by him.

O: PROVISIONS OF LAW:

It is the intent and understanding of the parties to the Agreement that each and every provision of law required to be inserted in the Agreement shall be and hereby is inserted herein. Further, it is hereby agreed that if through mistakes or otherwise any such provision is omitted, that the Agreement shall, upon application of either party, be amended by such insertion so as to strictly comply with the law and without prejudice to either party.

If the Agreement contains any unlawful provisions, not an essential part of the Agreement, and which appear not to have been controlling or a material inducement to the making thereof, the same shall be deemed of no effect, and shall, upon application of either party, be stricken from the Agreement without affecting the binding force of the Agreement as it shall remain after omitting such provision.

If the Agreement contains any errors, inconsistencies, ambiguities, or discrepancies, including typographical errors, Consultant shall request a clarification of same in writing to Metro, whose decision shall be binding upon the parties.

P: COMMENCEMENT OF WORK:

Consultant is authorized to commence work under the Agreement upon receipt of duly executed copy of the Agreement and of Notice to Proceed from the office of the Purchasing Agent, so long as the requirements of the Agreement, Article 7 - Insurance, inclusive, have been met and the executed Certificate of Insurance has been received and approved by Metro.

**EXHIBIT B
TO
AGREEMENT**

ACH FORM FOR ELECTRONIC PAYMENT

This Exhibit must be completed by the CONTRACTOR to facilitate payment of services.

**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
DEPARTMENT OF FINANCE, TREASURY DIVISION
ACH (AUTOMATED CLEARING HOUSE) CREDITS**

Company Name: _____

Federal Identification Number or Social Security Number (under which you are doing business with Metro) _____

I (We) hereby authorize the Treasurer of the Metropolitan Government of Nashville and Davidson County, hereafter called METRO TREASURER, to initiate credit entries to my (our) (*select type of account*) ☐ CHECKING or ☐ SAVINGS account indicated below and the depository named below, hereinafter called DEPOSITORY, to credit the same to such account.

This authority is to remain in full force and effect until METRO TREASURER has received written notification from me (or either of us) of its termination in such time and in such manner as to afford METRO TREASURER and DEPOSITORY a reasonable opportunity to act on it.

Many banking institutions use different numbers for ACH. Please call your bank for verification of ACH transit and account number.

Bank Official contacted: _____ Phone _____

DEPOSITORY/BANK NAME _____ BRANCH _____

CITY _____ STATE _____

ACH TRANSIT/ABA NO. _____ ACCOUNT NO. _____

NAME(S) _____

(Please print names of authorized account signatory)

SIGNED _____ DATE _____

SIGNED _____ DATE _____

Phone _____

Please mail to:
Finance - Division of Accts
Attn: Starla Friedmann
222 3rd Ave N Ste 750
Nashville, TN 37201

or Fax to: 615-862-6109
Attn: Starla Friedmann

SMALL BUSINESS STANDARDS

AS DEFINED IN SECTION 4.44.010 OF THE METROPOLITAN CODE OF LAWS;

A Small Business satisfies all of the following criteria:

- (a) A United States business which is independently owned and operated, and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation;
- (b) Either has no more than the following number of employees or has no more than the following annual sales volume for the applicable industry; and

INDUSTRY	ANNUAL SALES VOLUME	MAXIMUM NUMBER OF EMPLOYEES*
Agriculture, Forestry, Fishing	\$500,000	9
Architectural/Design/Engineering	\$2,000,000	30
Construction	\$2,000,000	30
Educational	\$1,000,000	9
Finance, Insurance, Real Estate	\$1,000,000	9
Information Systems/Technology	\$2,000,000	30
Manufacturing	\$2,000,000	99
Marketing/Communications/Public Relations	\$2,000,000	30
Medical/Healthcare	\$2,000,000	30
Mining	\$1,000,000	49
Retail Trade	\$750,000	9
Service Industry	\$500,000	9
Transportation, Commerce, and Utilities	\$1,000,000	9
Wholesale Trade	\$1,000,000	19

- (c) Meets the following additional criteria:
1. Has demonstrated capability to perform independently a substantial portion of the contract they seek, or a substantial portion of the subcontract for which they are proposed by a bidder or offeror, as specified by the Purchasing Agent;
 2. Not share or jointly use office space, production, marketing and sales, business support systems, personnel, or equipment with any business not classified by Metro as a small business (i.e., a large business);
 3. Has existed as a legal business entity for a minimum of one year (twelve months of continuous business enterprise), performing independently and satisfactorily and achieving a minimum of \$35,000.00 sales income (collected

- sales dollars not simply booked sales);
4. Not be owned, controlled, or directed by individuals or groups of individuals who own, control, or direct a large business involved in the same category of work as the business for which small business status is sought;
 5. If a supplier, be an authorized regular distributor with normal wholesale agreements for the Product or products to be supplied; and
 6. If a construction contractor, be licensed as required by the state to perform the work for which it has submitted a bid or has been proposed by a prime as a subcontractor.

*NOTE: Employee means a person (or persons) employed on a full-time (or full-time equivalent), a permanent basis. Full-time equivalent includes employees who work 30 hours per week or more. Full-time equivalent also includes the aggregate of employees who work less than 30 hours a week, where the work hours of such employees add up to at least a 40 hour work week. The totality of the circumstances, including factors relevant for tax purposes, will determine whether persons are employees of a concern. Temporary employees, independent contractors or leased employees are not employees for these purposes. The owner(s) are excluded from this classification.

LIST OF PROPOSED SMALL BUSINESSES

RFP #10-159

Proposer Name: _____

Notice: Small Businesses listed must be registered with Metro, and small business status must be approved by Metro **prior** to proposal submission. Registration can be completed online at: <https://smartrac.nashville.gov/newvendorlogin.aspx>

	Small Business Name	Small Business Address, Phone Number and email address	Industry of Work to be Performed by this Small Business (see <i>Instructions below this table</i>)	Phase in project when Small Business is anticipated to perform work	Minimum <i>Percentage</i> of total contract dollars to be spent with this Small Business
1.					
2.					
3.					
4.					
5.					
6.					

INSTRUCTIONS:

TOTAL _____

- If the proposer is a Small Business, the proposer should also be included in this list.
- If more than six (6) Small Businesses are to be listed, please attach an additional sheet.
- For the "Industry of Work to be Performed by this Small Business" column, you must enter an Industry listed here: Agriculture, Architectural/Design/Engineering; Educational; Information Systems/Technology; Marketing/Communications/Public Relations; Medical/Healthcare; Forestry, Fishing; Mining; Construction; Manufacturing; Wholesale Trade; Retail Trade; Finance, Insurance, Real Estate; Transportation, Commerce, and Utilities; Service Industry.

Submission of a proposal shall constitute Proposer's representation that neither Proposer nor an officer, agent or employee of Proposer, or the spouse, parent or child of an officer, agent or employee of Proposer, is involved in the ownership, operation or management of any subcontractor claiming status as a Small Business for purposes of this Proposal and Contract.

**Metropolitan Government of Nashville
Procurement Non-Discrimination
Program
Form Submission Procedures**

Demonstrating compliance with the Procurement Non-Discrimination Program requires the submission of the following forms:

1. **Statement of Good Faith Efforts**- This completed form is required at the time of bid/proposal submission. Each of the first three listed statements must be initialed by an authorized company official indicating that the prime contractor has made all of the good faith efforts required by the Procurement Non-Discrimination Program. Prime contractors should initial any of the additional good faith efforts listed subsequently on the form as they are applicable.

This form must be signed by a principle of your company and dated.

2. **Statements of Interested, Notified, and Successful Subcontractors** – This completed form is required at the time of bid/proposal submission to provide Metro with information regarding your outreach efforts. The first section of this form should list those firms that have contacted you as well as those with whom you have made contact regarding potential participation on this project. The second section of this form should list the MWBE subcontractors with whom you have decided to work with on this project if awarded.

Submitted forms should be fully completed and specify the MWBE company names, individual(s) contacted, date contacted, M/WBE Certificate Type, percentage of total contract value to be awarded, a description of the work to be performed, and the UNSPS Code of the work. A copy of the codes can be provided upon request to the BAO.

NOTE: Reasons for declining offers made by potential MWBE partners must be noted on this form.

This form must be signed by a principle of your company and dated.

3. **Letter of Intent to Perform as a Subcontractor/Joint Venture**--This form is to be completed and submitted by the apparent successful participant **by the end of the second business day following notice of intent to award from Metro.** It should specify the names of the MWBE's with whom the prime contractor intends to subcontract or joint venture. Additionally it should detail the work to be performed, the total value of the MWBE participation on the contract in dollars and percentage and must be signed by both the MWBE subcontractor/joint venture partner AND the prime contractor and dated.

NOTE: A separate form must be completed for each individual MWBE subcontractor/joint venture partner.

Any additional questions regarding required detail and documentation to demonstrate



STATEMENT OF GOOD FAITH EFFORTS

Subject: Proposal for _____
(Name of Project)

Pursuant to the requirements for Participants under the Procurement Non-Discrimination Program, and in consideration of the privilege to submit Proposals on contracts funded, in whole or in part, by the Metropolitan Government, I/We, attest that I/We have made the following efforts to ensure that potential MWBE subcontractors were notified of the opportunity to participate as a subcontractor or joint venturer on this project.

- _____ I/We have made efforts to include MWBE's in the procurement process and to ensure that businesses are not discriminated against on the basis of race, ethnicity or gender;
- _____ I/We have delivered written notice to three available certified MWBEs for each potential subcontracting or supply category in the Contract AND all potential subcontractors or vendors which requested information on the Contract.
- _____ I/We have provided all potential subcontractors or vendors with adequate information as to plans, specifications, relevant terms and conditions of the Contract, bonding requirements, and the last date and time for receipt of price quotations.

Additionally, _____ has made the following Good Faith Efforts to include MWBEs as subcontractors or joint venturers on this project.

- _____ I/We have attended a special meeting called to inform business and individuals of subcontracting or supply opportunities.
- _____ I/We have, in accordance with normal industry practices, divided the contract into economically feasible segments that can be performed by a MWBE.
- _____ I/We have provided a written explanation for rejection of any potential subcontractor or vendor to the BAO, included the name of the firm proposed to be awarded the subcontract or supply agreement, where price competitiveness is not the reason for rejection.
- _____ I/We have actively solicited, through sending letters or initiating personal contact, MWBEs in all feasible and appropriate categories providing subcontracting opportunities for the contract under consideration.
- _____ I/We have utilized the services of available community organizations and associations,

contractors' groups, and trade associations known to publicize contracting and procurement opportunities, for the purpose of obtaining assistance in the contacting and recruitment of MWBEs for the Metropolitan Government contract under consideration.

_____ I/We have advertised in publications of general circulation in the Nashville Metropolitan Statistical Area ("MSA"), trade publications and other media owned by, or otherwise focused or marketed to MWBEs, and the advertisement identifies and describes the specific subcontracting or other opportunity in reasonable detail.

_____ I/We have conducted discussions with interested MWBEs in good faith, and provided the same willingness to assist MWBEs as has been extended to any other similarly situated subcontractor.

_____ I/We have taken steps to ensure that all labor supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain a non-discriminatory work environment, free of harassment, intimidation and coercion at all construction sites, offices and other facilities to which employees are assigned to work.

Printed Name of Company Official

Date

Signature

Title of Company Official

Full Company Name

Mailing Address

Area Code/Phone Number

City, State, Zip

Please contact the Business Assistance Office at (615) 880-2814 with any questions about information which may be required.

LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR/JOINT VENTURE

This form is to be completed and submitted by the apparent successful participant by the end of the second business day following notice of intent to award.

Proposal for _____
(Name of Project)

Prime Contractor Name _____

The undersigned has agreed to perform work in connection with the above project as:

_____ a subcontractor _____ a joint venture

Detailed description of work items to be performed:

at the following price(s): \$ _____.

The total value of MWBE participation under this Subcontractor/Joint Venture Agreement is

\$ _____; which is _____% of the total Proposal.

Signature of Subcontractor/Joint Venturer

Printed Name: _____

Title: _____

Date: _____

The undersigned will enter into a written agreement with the above subcontractor for the work described upon award and execution of a contract with The Metropolitan Government.

Signature of Prime Contractor

Printed Name: _____

Title: _____

Date: _____



STATEMENTS OF INTERESTED, NOTIFIED AND SUCCESSFUL SUBCONTRACTORS

Please complete this form to provide Metro with information regarding your outreach efforts. Please include information appropriately regarding those certified MWBEs that you contacted, who contacted you and those that you have decided to work with on this project. Please add additional copies of this sheet as necessary so that you may list ALL MWBEs with whom you've had contact. Please contact the Business Assistance Office with any questions at 615-880-2814. Part I of this form must be completed and Part II should be completed if you have identified MWBE firms with whom you will work on this project.

Project Name _____ RFP/ITB Number _____

As part of our regular and customary good faith efforts to include MWBE subcontractors, suppliers and joint venturers, _____ (Company Name) _____ has contacted or was contacted by the following certified MWBEs related to our bid/proposal.

Part I

<i>Business Name & Contact</i>	<i>Phone No</i>	<i>MBE/WBE Certificate Type</i>	<i>Date of Contact</i>	<i>Method of Contact</i>	<i>Who Initiated Contact?</i>	<i>If Bid Submitted, Amount of Bid*</i>	<i>Offer Accepted or Declined</i>	<i>Reason(s) for Declining</i>

*STATEMENT OF BID/PRICE QUOTATION

Having submitted a Proposal/bid for the above referenced project, if awarded the resulting contract or Purchase Order, _____ (Company Name) _____ advises that contingent upon award of the contract to our company, our subcontractor, suppliers, or joint venture partnership participation is projected to be as follows:

Part II

<i>Business Name & Contact</i>	<i>Phone No</i>	<i>MBE/WBE Certificate Type</i>	<i>Dollar value</i>	<i>Estimated % of total contract value</i>	<i>UNSPS Code # for work to be performed</i>	<i>Work to be performed</i>

Name _____ Title _____ Date _____

Affidavit

STATE OF _____

COUNTY OF _____

AS USED HEREIN, "OFFEROR" WILL INCLUDE BIDDERS AND PROPOSERS.

COMPLIANCE WITH LAWS: AFTER FIRST BEING DULY SWORN ACCORDING TO LAW, THE UNDERSIGNED (AFFIANT) STATES THAT HE/SHE IS THE _____ (TITLE) OF _____ (OFFEROR), AND THAT OFFEROR IS PRESENTLY IN COMPLIANCE WITH, AND WILL CONTINUE TO MAINTAIN COMPLIANCE WITH, ALL APPLICABLE LAWS. THUS, AFFIANT STATES THAT OFFEROR HAS ALL APPLICABLE LICENSES, INCLUDING BUSINESS LICENSES, COPIES OF WHICH ARE ATTACHED HERETO. FINALLY, AFFIANT STATES THAT OFFEROR IS CURRENT ON ITS PAYMENT OF ALL APPLICABLE GROSS RECEIPT TAXES AND PERSONAL PROPERTY TAXES.

CONTINGENT FEES: IN ACCORDANCE WITH THE METROPOLITAN GOVERNMENT'S 1992 PROCUREMENT CODE, IT IS A BREACH OF ETHICAL STANDARDS FOR A PERSON TO BE RETAINED, OR TO RETAIN A PERSON, TO SOLICIT OR SECURE A METROPOLITAN GOVERNMENT CONTRACT UPON AN AGREEMENT OR UNDERSTANDING FOR A CONTINGENT COMMISSION, PERCENTAGE, OR BROKERAGE FEE, EXCEPT FOR RETENTION OF BONA FIDE EMPLOYEES OR BONA FIDE ESTABLISHED COMMERCIAL SELLING AGENCIES FOR THE PURPOSE OF SECURING BUSINESS. AFTER FIRST BEING DULY SWORN ACCORDING TO LAW, THE UNDERSIGNED (AFFIANT) STATES THAT THE OFFEROR HAS NOT RETAINED ANYONE IN VIOLATION OF THE FOREGOING.

NON-DISCRIMINATION: AFTER FIRST BEING DULY SWORN ACCORDING TO LAW, THE UNDERSIGNED (AFFIANT) STATES THAT BY ITS EMPLOYMENT POLICY, STANDARDS, AND PRACTICES THE OFFEROR DOES NOT SUBSCRIBE TO ANY PERSONNEL POLICY WHICH PERMITS OR ALLOWS FOR THE PROMOTION, DEMOTION, EMPLOYMENT, DISMISSAL, OR LAYING OFF OF ANY INDIVIDUAL DUE TO HIS/HER RACE, CREED, COLOR, NATIONAL ORIGIN, AGE, OR SEX, AND THAT THE OFFEROR IS NOT IN VIOLATION OF AND WILL NOT VIOLATE ANY APPLICABLE LAWS CONCERNING THE EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

IT IS THE POLICY OF THE METROPOLITAN GOVERNMENT NOT TO DISCRIMINATE ON THE BASIS OF AGE, RACE, SEX, COLOR, NATIONAL ORIGIN, OR DISABILITY IN ITS HIRING AND EMPLOYMENT PRACTICES, OR IN ADMISSION TO, ACCESS TO, OR OPERATION OF ITS PROGRAMS, SERVICES, AND ACTIVITIES. WITH REGARD TO ALL ASPECTS OF ITS CONTRACT WITH THE METROPOLITAN GOVERNMENT, OFFEROR CERTIFIES AND WARRANTS IT WILL COMPLY WITH THIS POLICY.

AND FURTHER AFFIANT SAYETH NOT:

BY: _____
 TITLE: _____
 ADDRESS: _____

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS ____ DAY OF _____, 20 ____.

 NOTARY PUBLIC
 MY COMMISSION EXPIRES: _____