

July 22, 2024

**Request for Bids TO-25-01**

Asphalt Mill & Overlay Project  
Single-Job Contract

Topeka Metropolitan Transit Authority (Metro) is requesting bids from qualified firms to perform a 2” asphalt mill and overlay to approximately 10,762 square yards of asphalt pavement at our Ryan Administration Building, Maintenance Facility, and employee parking area under the Kansas Avenue Bridge all located together at 201 N. Kansas Avenue in Topeka, Kansas.

Proposers shall have sufficient experience and qualifications to perform the asphalt mill and overlay. Proposers will be responsible for all aspects of this project, including but not necessarily limited to:

- Perform a 2” asphalt Mill & Overlay to approximately 10,762 square yards of asphalt pavement to the three areas listed in Appendix III Engineering Drawing;
- Once the milling is complete perform any necessary patch work before moving on to the overlay;
- Final lifts of asphalt shall be congruent and placed in the same lift;
- Deposit the asphalt millings in the unfinished parking area to the west of the Maintenance Building;
- Restore all paint striping to original condition;
- Coordinate work schedule, traffic flow, and asphalt area access with Metro to minimize service and work flow disruptions;
- Follow all contract requirements on pages 3-13;
- Follow the City of Topeka 2023 Section 7 – Asphalt Standard Technical Specifications as listed in Appendix IV;
- Follow all requirements set forth in the City of Topeka Owner Agreement as listed in Appendix V;
- Acquire all necessary licenses, certifications, and permits, and payment of fees for same;
- Furnish all labor, material and equipment necessary for satisfactory contract performance;
- Hire all subcontractors and ensure their compliance with contractual requirements; and,
- Ensure that the asphalt overlay in all areas is ready for use upon completion.

If you would like to inspect the site, you may schedule your site visit with:

Alan Parrish, Director of Maintenance  
[maintenance@topekametro.org](mailto:maintenance@topekametro.org)  
785-730-8690

This will be a single-job contract. Provide your completion date on the Price Quote form.

**Davis-Bacon**

Davis-Bacon reporting requirements must be completed each week. The most recent Davis-Bacon wage rates for building projects in the State of Kansas are attached (Appendix 1). The contractor is responsible for complying with Davis-Bacon wage rates and postings as required. The worksite posting is attached (Appendix 2). Contractor will follow all contract terms on pages 3-13.

**General Instructions**

Bids must be submitted in the following format:

- 1) Cover sheet signed by the individual authorized to commit the firm to perform the contract requirements, including your firm's name, address, phone, fax, and email;
- 2) Provide a description of your understanding of, and ability to fulfill the specifications and services requested in this RFB;
- 3) Provide a description of your firm's experience and qualifications. Supply at least three references with current contact information, for which you have provided the same or similar services as specified in this RFB;
- 4) Warranty information on both the materials and installation, including length of warranty, coverage, and contact information if warranty work is needed; and,
- 5) The completed cover letter, price quote and certifications on pages 14-23.

In order to be considered for contract award, your bid must be received in the Metro office by **1:00pm on Thursday, August 29, 2024.** Bids received after the deadline will not be considered.

Following are the evaluation criteria, listed by degree of importance. A criterion may have multiple elements with varying degrees of importance.

Experience and Qualifications  
Price  
Scheduling

The cover sheet, price quote form and the certifications on pages 14-23 are part of your bid and must be completed by all bidders. Bids that do not include the completed price quote and fully executed certifications may not be considered. The successful bidder will be required to follow the contract clauses on pages 3-13.

No advantage shall be taken by the contractor or any subcontractor in fulfilling the terms of this project due to omission of specifications by Metro.

Topeka Metro's current DBE goal is 1.62%. There is no DBE goal for this contract. If your firm is a DBE, or if you will be sub-contracting with a DBE, please attach a copy of the current DBE certificate.

Upon contract award, all proposals will be public record and posted to Metro's website. Metro recommends that proposers exclude any trade secret, proprietary or confidential information from their proposals.

Topeka Metro is a direct deposit payor. The successful bidder will be required to fill out a W-9 Form and the Topeka Metro Electronic Payment/ACH Authorization Form.

If you have any questions concerning this RFB, or if you need clarification or additional information, please contact Richard Appelhanz. Electronic submission of bids is preferred. If submitting bids on paper, please provide an original and three full copies. Bids are to be sent to:

Topeka Metropolitan Transit Authority  
Attn: Richard Appelhanz  
201 North Kansas Avenue  
Topeka, KS 66603  
785-730-8621 [rappelhanz@topekametro.org](mailto:rappelhanz@topekametro.org)

**Questions must be received by Metro by August 5, 2024**

The preceding specifications and the following clauses and certifications will be part of the contract.

#### 1.0 ACCESS TO RECORDS

The Contractor agrees to provide Metro, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.15 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302 and 49 CFR 633.5, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until Metro, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 2 CFR 200.333 and 2 CFR 200.336. FTA does not require the inclusion of these requirements in subcontracts.

#### 2.0 ADA ACCESS

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, Contractor agrees that it will comply with the requirements of the US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

#### 3.0 ASSIGNMENT AND DELEGATION

Contractor shall neither delegate any duties or obligations under this contract, nor assign, transfer, convey, sublet, subcontract or otherwise dispose of the contract or its right, duty, title or interest in or to the same, or any part thereof, without previous written consent of Metro.

#### 4.0 BONDING

##### 4.1 Bid Bonds – Construction

A Bid Bond equal to 5% of the bid price must be issued by a fully qualified surety company acceptable to Metro and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described there under. In submitting this bid, it is understood and agreed by the bidder that the right is reserved by Metro to reject any and all bids, or part of any bid, and it is agreed that the bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of Metro. It is also understood and agreed that if the undersigned bidder should withdraw any part of all of his bid within 90 days after the bid opening without the written consent of Metro, should refuse or be unable to enter into this contract, or should refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or should refuse or be unable to furnish adequate and acceptable insurance, as provided above, bidder shall forfeit its bid security to the extent of Metro's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof. It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by Metro as provided in the Instructions to Bidders) shall prove inadequate to fully recompense Metro for the damages occasioned by default, then the undersigned bidder agrees to indemnify Metro and pay over to Metro the difference between the bid security and Metro total damages, so as to make Metro whole. The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

##### 4.2 Performance and Payment Bonds – Construction

The contractor shall be required to obtain Performance and Payment Bonds.

4.2.1 The penal amount of Performance Bonds shall be 100% of the original contract price, unless Metro determines that a lesser amount would be adequate for the protection of Metro. Metro may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100% of the increase in contract price. Metro may secure additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond.

4.2.2 The penal amount of Payment Bonds shall equal:

50% of the contract price if the total contract is for no more than \$1 million.

40% of the contract price if the contract is for between \$1 and \$5 million.

\$2.5 million if the contract is for \$5 million or more.

If the original contract price if \$5 million or less, Metro may require additional protection if the contract price is increased.

##### 4.3 Performance and Payment Bonds – Non-Construction

The Contractor may be required to obtain Performance Bonds and Payment Bonds when necessary to protect Metro interests.

The following situations may require a Performance Bond:

4.3.1 Metro property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

- 4.3.2 Contractor sells assets to or merges with another concern, and Metro, after recognizing latter concern as the successor in interest, desires assurance that it is financially capable.
- 4.3.3 Substantial progress payments are made before delivery of end items starts.
- 4.3.4 Contracts are for dismantling, demolition, or removal of improvements.

When it is determined that a performance bond is required, the penal amount of Performance Bonds shall be 100% of the original contract price, unless Metro determines that a lesser amount would be adequate for the protection of Metro. Metro may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100% of the increase in contract price. Metro may secure additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond. A Payment Bond is required only when a Performance Bond is required, and if the use of Payment Bond is in the interest of Metro.

The penal amount of Payment Bonds shall equal:

- 50% of the contract price if the total contract is for no more than \$1 million.
- 40% of the contract price if the contract is for between \$1 and \$5 million.
- \$2.5 million if the contract is for \$5 million or more.

If the original contract price if \$5 million or less, Metro may require additional protection if the contract price is increased.

4.4 Advance Payment Bonding

Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. Metro shall determine the amount of the advance payment bond necessary to protect Metro.

4.5 Patent Indemnity / Patent Infringement Bonding

Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the contractor is unknown or doubtful. Metro shall determine the amount of the patent indemnity to protect Metro.

4.6 Warranty of Work and Maintenance Bonds

Contractor warrants to Metro, the Architect and/or the Engineer that all materials and equipment furnished under this contract will be of highest quality and new unless otherwise specified by Metro, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be considered defective. If required by the Project Manager, the contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be safe, substantial and durable construction in all respects. The contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one year after final payment by Metro, and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to Metro. As additional security for these guarantees, the contractor shall, prior to the release of final payment, furnish separate Maintenance (or Guarantee) Bonds in a form acceptable to Metro, written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this contract. These bonds shall secure the contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one year after final payment and shall be written in an amount equal to 100% of the final contract amount.

5.0 BREACHES AND DISPUTE RESOLUTION

- 5.1 Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Metro's Contract Administrator. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the contractor submits a written appeal to the Contract Administrator. In connection with any such appeal, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Contract Administrator shall be binding upon the contractor, and the contractor shall abide by the decision.
- 5.2 Unless otherwise directed by Metro, the contractor shall continue performance under this contract while matters in dispute are being resolved.
- 5.3 Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of party's employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party as soon as practicable after the injury or damage is first known or ascertainable, and in no event later than fifteen (15) calendar days thereafter.
- 5.4 Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Metro and the contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in the district court of Shawnee County, Kansas.
- 5.5 The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Metro or the contractor shall constitute a waiver of any right or duty afforded any of them under this contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

6.0 BUY AMERICA

The Contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(c) and 49 CFR 611.11. Rolling stock must be assembled in the United States and have over 60% domestic content for deliveries prior

to FY2018, over 65% for deliveries in FY2018 and FY2019, and over 70% for deliveries in FY2020 and thereafter. A bidder or offeror must submit to Metro the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier sub-contractors.

#### 7.0 CARGO PREFERENCE

The contractor agrees: (1) to use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the contract to the extent such vessels are available at fair and reasonable rates for US-Flag commercial vessels; (2) to furnish within 20 working days following the date of loading for shipments originating within the U.S. or within 30 working days following the date of loading for shipments originating outside the U.S., a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to:

Division of National Cargo  
Office of Market Development  
Maritime Administration  
Washington, DC 20590

with a copy to Metro (through the contractor in the case of a subcontractor's bill-of-lading); and, (3) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

#### 8.0 CIVIL RIGHTS

- 8.1 Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 USC 12132, and Federal transit law at 49 USC 5332, the contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 8.2 Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:
- 8.2.1 Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and Federal transit law at 49 USC 5332, the contractor agrees to comply with all applicable equal employment opportunity requirements of US Department of Labor (USDOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the project. The contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.
- 8.2.2 Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC 623 and Federal transit law at 49 USC 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 8.2.3 Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, the Contractor agrees that it will comply with the requirements of the US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.
- 8.3 The contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- 8.4 If the contract involves federal funds, the provisions of this subsection do not apply. If the contract does not involve federal funds, and if contractor's contracts with Topeka Metro for the current fiscal year cumulatively total more than \$5,000 and the contractor has four or more employees during the term of this contract, the contractor also agrees to observe the provisions of the Kansas Act Against Discrimination and the Kansas Age Discrimination in Employment Act and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin or ancestry. In all solicitations or advertisements for employees, the contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by Topeka Metro. If the contractor fails to comply with the reporting or other requirements of the Kansas Human Rights Commission under K.S.A. 44-1031 or K.S.A. 44-1116, and amendments thereto, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by Topeka Metro. If contractor is found guilty of a violation of the Kansas Act Against Discrimination or the Kansas Age Discrimination in Employment Act under a decision or order of the Kansas Human Rights Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by Topeka Metro. Contractor agrees to include the binding provisions of this subsection in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

#### 9.0 CLEAN AIR AND WATER



Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor agrees to report each violation to Metro and understands and agrees that Metro will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### 10.0 COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

Contractor shall at all times be solely responsible for complying with all applicable local, state and federal laws, ordinances and regulations in connection with the performance of this contract.

#### 11.0 CONFIDENTIALITY

Between the date and time that proposals are due, until award of the contract by Metro, no information will be released which may have an adverse impact upon the negotiations or selection process. No information will be shared about the distinguishing characteristics or deficient characteristics of any proposal. All documents received by Metro are subject to the Kansas Open Records Act, KSA 45-215, et seq., and the Freedom of Information Act, 5 USC 552.

#### 12.0 CONFLICT OF INTEREST

No director or employee of Topeka Metropolitan Transit Authority, during his/her tenure or within one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

#### 13.0 CONTRACT CHANGES

Any proposed change to this contract shall be submitted to Metro in writing for approval. No change in this contract shall be made unless Metro gives prior written approval. Contractor shall be liable for all costs, damages and/or liabilities, and for proper corrections, resulting from any specification change not properly approved in writing by Metro. Changes that have not been approved by Metro shall place Contractor in default of the contract.

#### 14.0 CONTRACT WORK HOURS & SAFETY STANDARDS

- 14.1 Overtime Requirements – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 14.2 Violation: Liability for Unpaid Wages; Liquidated Damages – In the event of any violation of the clause set forth in paragraph 14.1, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 14.1, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 14.1.
- 14.3 Withholding for Unpaid Wages and Liquidated Damages – Metro shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 14.2.
- 14.4 Subcontracts – The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 14.1 through 14.4 and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the clauses set forth in paragraphs 14.1 through 14.4.

#### 15.0 DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

##### 15.1 Minimum Wages

- 15.1.1 All laborers and mechanics employed or working upon the site of the work (or under the U.S. Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1.4) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds or programs which cover the

particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1.2) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- 15.1.2 (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) Except with respect to helpers as defined at 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to:

Administrator  
Wage and Hour Division  
Employment Standards Administration  
US Department of Labor  
Washington, DC 20210

The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

- 15.1.5 (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to:

Administrator  
Wage and Hour Division  
Employment Standards Administration  
US Department of Labor  
Washington, DC 20210

The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- 15.2 Withholding – Metro shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the US Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Metro may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- 15.3 Payrolls and Basic Records
- 15.3.1 Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the US Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- 15.3.2 (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Metro for transmission to the FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), US Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- (B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;
  - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3; and,
  - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the U.S. Code.
- 15.3.3 The contractor or subcontractor shall make the records required under this section available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- 15.4 Apprentices and Trainees
- 15.4.1 Apprentices – Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the US Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or



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

- 15.4.2 Trainees – Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the US Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the jobsite shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll as a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the jobsite in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- 15.4.3 Equal Employment Opportunity – The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- 15.5 Compliance with Copeland Act Requirements – The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.
- 15.6 Subcontracts – The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all the contract clauses in 29 CFR 5.5.
- 15.7 Contract Termination; Debarment – A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- 15.8 Compliance with Davis-Bacon and Related Act Requirements – All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- 15.9 Disputes Concerning Labor Standards – Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Metro, the US Department of Labor, or the employees or their representatives.
- 15.10 Certification of Eligibility
- 15.10.1 By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act of 29 CFR 5.12(a)(1).
- 15.10.2 No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act of 29 CFR 5.12(a)(1).
- 15.10.3 The penalty for making false statements is prescribed in the US Criminal Code, 18 USC 1001.

## 16.0 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- 16.1 This contract is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. Metro's overall 2022-2024 goal for DBE participation is 1.62%; the race neutral goal is 0.37%, and the race conscious goal is 1.25%. There is no contract goal for this procurement.
- 16.2 The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Metro deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- 16.3 The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from Metro.
- 16.4 The contractor may not hold retainage from its subcontractors.
- 16.5 The contractor must promptly notify Metro, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Metro.

## 17.0 ENERGY CONSERVATION

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

## 18.0 EQUAL EMPLOYMENT OPPORTUNITY – USDOL

During the performance of this contract: (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, gender or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, gender or national origin. (3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (7) The contractor will include this clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order, and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part contract; refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### 19.0 EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Metro will comply with the requirements of 49 USC 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

#### 20.0 FEDERAL CHANGES

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

#### 21.0 FLY AMERICA

The contractor agrees to comply with 49 USC 40118 (the Fly America Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S. government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

#### 22.0 INCORPORATION OF FTA TERMS

These contract provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the included contract provisions. All contractual provisions required by USDOT, as set forth in the current version of FTA Circular C 4220.1, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any Metro requests which would cause Metro to be in violation of the FTA terms and conditions.

#### 23.0 INDEMNIFICATION

Contractor shall be responsible for and indemnify, defend and hold harmless Metro, its directors and employees from all demands, claims, suits and settlements for loss of or damages to property, or personal injuries, including death to persons, and from all judgments recovered, and from all expenses incurred in defending or settling said claims or suits, or enforcing this provision, including court costs and attorney fees and other expenses arising out of the errors, omissions or negligent acts of the Contractor, its employees, or agents in connection with the goods and/or services provided under this contract.

#### 24.0 INSURANCE

Contractor shall maintain for the duration of the contract such insurance as will protect it and Metro from all claims, including Workers' Compensation, and will hold Metro harmless from, and indemnify Metro for, all claims and damages which may arise out of or result from the Contractor's operations under this contract, whether such operations are by Contractor, by a subcontractor, by anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable. Contractor will submit certificates or other proof of insurance to Metro, naming Metro as an additional insured, upon notification of contract award.

#### 25.0 INTEREST OF CONGRESS

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit arising therefrom.

#### 26.0 LEGAL MATTER NOTIFICATION

Contractor agrees to notify Metro if a current or prospective legal matter emerges while this contract is in effect that may affect the Federal Government. Contractor also agrees to include this requirement in all subcontracts issued pursuant to this contract.

#### 27.0 LOBBYING

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR 20.110, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier, up to Metro.

### 28.0 NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

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

### 29.0 PATENT INFRINGEMENT

Contractor agrees that it will, at its own expense, defend all suits and all proceedings instituted against Metro, if such suits and proceedings are based on any claim that the materials or equipment provided by Contractor, or any part thereof, or any tool, article or process used in the manufacture thereof, constitutes an infringement of any patent. Metro will give Contractor prompt notice in writing of any suit or proceeding, and will give Contractor all needed information, assistance and authority to enable Contractor, through its legal counsel, to defend the same.

### 30.0 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

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

### 31.0 PROTEST PROCEDURE

All protests in the procurement cycle must contain the following information: (1) Name of Protestor; (2) RFP Number; (3) Statement of grounds for protest; and, (4) All supporting documentation. All protest documents shall be sent to:

Topeka Metropolitan Transit Authority  
Attn: Procurement Officer  
201 North Kansas Avenue  
Topeka, KS 66603

The words "Protest / Open Immediately" must appear on the outside of the mailing envelope.

Pre-award protests filed in conjunction with the schedule or RFP documents must be filed in writing no less than five (5) days prior to the final submission date of proposals. Post-award protests must be filed within five (5) days of the notice of award.

Protests will be reviewed by the Procurement Officer, who will make a determination. This determination will be sent to all known proposers by certified mail within five (5) days of the receipt of the protest. The FTA will be notified of any protest received pertaining to this project.

If the protester wishes to appeal the determination of the Procurement Officer, an appeal must be filed in writing to the Metro Board of Directors, at the address listed above, within five (5) days of the determination. The words "Protest / Open Immediately" must appear on the outside of the mailing envelope. The Board of Directors will make a decision on the appeal at its next regularly scheduled meeting following receipt of the appeal. The decision of the Board of Directors is final.

The FTA will entertain an appeal of the Board's final decision only under one of the following four conditions: (1) Metro did not follow its protest procedure; (2) Metro failed to review the protest; (3) data becomes available that was not previously known; or, (4) there was an error of law.

### 32.0 QUALIFIED VETERANS

In accordance with MAP-21 requirements, the contractor will give hiring preference, to the extent practicable, to qualified veterans (except over equally qualified minorities or members of other protected classes).

### 33.0 RECYCLED PRODUCTS

The contractor agrees to comply with all of the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 USC 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

### 34.0 SEAT BELT USE

In accordance with the provisions of Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 USC 402 note, by adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned or rented vehicles or personally owned vehicles, and by including a "Seat Belt Use" provision in each third-party agreement related to the project.

### 35.0 SUSPENSION AND DEBARMENT

In accordance with 2 CFR Parts 180 and 1200, the contractor is required to verify that none of its principals or affiliates: 1) is included on the federal government's suspended and debarred list; 2) is proposed for debarment, declared ineligible, voluntarily excluded or disqualified; 3) within three years preceding this proposal, has not been convicted of or had a civil judgment rendered against them for (a) commission of fraud or criminal offense pertaining to performing a public transaction, (b) violation of any federal or state antitrust statute, or (c) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; 4) is indicted or charged by a governmental entity for any of the charges in 3) above; and 5) has had any public transaction terminated for cause or default within three years preceding this proposal. The contractor is required to include this requirement in any subcontracts related to this contract. By signing and submitting its proposal, the proposer certifies that the certification in this clause is a material representation of fact relied upon by Metro. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to Metro, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to verify that none of its principals or affiliates is included on the federal government's suspended and debarred list at any time throughout the period of this contract. The proposer further agrees to include a provision requiring the same compliance in its subcontracts related to this contract.

### 36.0 TERMINATION

Termination for Convenience – Metro may terminate this contract, in whole or in part, at any time by written notice to the contractor when it is in the Metro's best interest. The contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to Metro to be paid to the contractor. If the contractor has any property in its possession belonging to Metro, the contractor will account for the same, and dispose of it in the manner Metro directs.

Termination for Default – If the contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the contractor fails to perform in the manner called for in the contract, or if the contractor fails to comply with any other provisions of the contract, Metro may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the contractor setting forth the manner in which the contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by Metro that the contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the contractor, Metro, after setting up a new delivery of performance schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure – Metro in its sole discretion may, in the case of a termination for breach or default, allow the contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to Metro's satisfaction the breach or default of any of the terms, covenants, or conditions of this contract within ten (10) days after receipt by contractor of written notice from Metro setting forth the nature of said breach or default, Metro shall have the right to terminate the contract without any further obligation to the contractor. Any such termination for default shall not in any way operate to preclude Metro from also pursuing all available remedies against contractor and its sureties for said breach or default.

Waiver of Remedies for Any Breach – In the event that Metro elects to waive its remedies for any breach by contractor of any covenant, term or condition of this contract, such waiver by Metro shall not limit Metro's remedies for any succeeding breach of that or of any other term, covenant,

Termination for Default (construction projects only) – If the contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the contractor fails to comply with any other provisions of this contract, Metro may terminate this contract for default. Metro shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. In this event, Metro may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the worksite necessary for completing the work. The contractor and its sureties shall be liable for any damage to Metro resulting from the contractor's refusal or failure to complete the work within specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Metro in completing the work. The contractor's right to proceed shall not be terminated nor the contractor charged with damages under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include: acts of God, acts of Metro, acts of another contractor in the performance of a contract with Metro, epidemics, quarantine restrictions, strikes, freight embargoes; and the contractor, within ten (10) days from the beginning of any delay, notifies Metro in writing of the causes of delay. If in the judgment of Metro, the delay is excusable, the time for completing the work shall be extended. The judgment of Metro shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of the contractor's right to proceed, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Metro.



**COVER SHEET**

**Proposer Information**

Company Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Main Phone \_\_\_\_\_

**Contact Person Information**

Name \_\_\_\_\_

Job Title \_\_\_\_\_

Phone \_\_\_\_\_

Alt. Phone \_\_\_\_\_

Email \_\_\_\_\_

Signature \_\_\_\_\_

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

**PRICE QUOTE**

Proposer \_\_\_\_\_

**Asphalt Mill & Overlay Project**

Cold Milling \$ \_\_\_\_\_

2" Asphaltic Concrete \$ \_\_\_\_\_

Paint Striping \$ \_\_\_\_\_

Millings to Unfinished Parking Area \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

**Total Cost** \$ \_\_\_\_\_

**Warranty Information** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Estimated Start Date \_\_\_\_\_

Estimated Completion Date \_\_\_\_\_

Topeka Metro is tax exempt. Do not include sales tax in your proposed price.

**BUY AMERICA CERTIFICATION**

**Certificate of Compliance with 49 USC 5323(j)**

The bidder hereby certifies that it will meet the requirements of 49 USC 5323(j), and the applicable regulations in 49 CFR Part 661 and any amendments thereto.

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

Name & Title: \_\_\_\_\_

Company: \_\_\_\_\_

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

**Certificate of Non-Compliance with 49 USC 5323(j)**

The bidder hereby certifies that it cannot comply with the requirements of 49 USC 5323(j) and 49 CFR 661.5, but it may qualify for an exception pursuant to 49 USC 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

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

Name & Title: \_\_\_\_\_

Company: \_\_\_\_\_

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

**DISADVANTAGED BUSINESS ENTERPRISES (DBE) CERTIFICATION**

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. Metro’s overall 2022-2024 goal for DBE participation is 1.62%; the race neutral goal is 1.25%, and the race conscious goal is 0.37%. There is no contract goal for this procurement.

The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Metro deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from Metro.

The contractor may not hold retainage from its subcontractors.

The contractor must promptly notify Metro, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Metro.

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

Name and Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

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

**FLY AMERICA CERTIFICATION**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

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

Name and Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

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



**LOBBYING CERTIFICATION**

The undersigned contractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. See 49 CFR 20.100.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 USC 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure. See 49 CFR 20.400.]

The undersigned contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC 3801, et seq, apply to this certification and disclosure, if any.

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

Name and Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

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

**NON-COLLUSION CERTIFICATION**

This is my sworn statement to certify that this proposal was not made in the interest of or on behalf of any undisclosed entity. This proposal is not collusive.

This proposer has not been a party to any agreement or collusion in restraint of freedom of competition by agreement to bid a fixed price, to refrain from bidding, or otherwise. This proposer has not, directly or indirectly, by agreement, communication or conference with anyone, attempted to induce action prejudicial to the interest of Topeka Metropolitan Transit Authority, or of any proposer, or anyone else interested in the proposed contract.

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

Name and Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

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

**SEISMIC SAFETY CERTIFICATION**

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

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

Name and Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

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

**SUSPENSION / DEBARMENT CERTIFICATION**

**In regard to 2 CFR Parts 180 and 1200**

In accordance with 2 CFR Parts 180 and 1200, the contractor is required to verify that none of its principals or affiliates:

- 1) is included on the federal government’s suspended and debarred list;
- 2) is proposed for debarment, declared ineligible, voluntarily excluded or disqualified;
- 3) within three years preceding this proposal, has been convicted of or had a civil judgment rendered against them for (a) commission of fraud or criminal offense pertaining to performing a public transaction, (b) violation of any federal or state antitrust statute, or (c) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- 4) is indicted or charged by a governmental entity for any of the charges in 3) above; and
- 5) has had any public transaction terminated for cause or default within three years preceding this proposal.

The contractor is required to include this requirement in any subcontracts related to this contract.

By signing and submitting its proposal, the proposer certifies that the certification in this clause is a material representation of fact relied upon by Metro. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to Metro, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to verify that none of its principals or affiliates is included on the federal government’s suspended and debarred list at any time throughout the period of this contract. The proposer further agrees to include a provision requiring the same compliance in its subcontracts related to this contract.

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

Name and Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

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

**WAGE RATES AND FRINGES CERTIFICATION**  
**Davis-Bacon Requirements**

The undersigned, being duly authorized to sign and act for the proposer, hereby certifies that all parties involved in the project as specified in this contract will pay wage rates and fringes in accordance with the Davis-Bacon requirements, and in conformance with the appropriate US Department of Labor decision.

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

Name and Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

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