



CITY OF EVANSVILLE-VANDERBURGH CO  
1 N.W. Martin Luther King Jr. Boulevard  
Room 310, Civic Center Complex  
Evansville, IN 47708



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**INVITATION FOR BID**  
**APA-IFB-002-23**  
**WASTE REMOVAL SERVICE (DUMPSTERS)**

May 16, 2023

**NOTICE TO BIDDERS**

The City/County of Evansville/Vanderburgh County Purchasing Department on behalf of the Board of Public Works ("City") and Vanderburgh County Commissioners ("County") (hereinafter, collectively or alternately as applicable, "City/County") is accepting bids for Waste Removal Service at various locations in the City/County. Sealed bids will be received in Room 301, Civic Center Complex, 1 N.W. Martin Luther King, Jr. Boulevard, Evansville, Indiana 47708 at 1:30 P.M. on Thursday June 8, 2023. The bids will be publicly opened and read aloud at the Board of Public Works meeting.

Vendors wishing to deliver Bids must do so by 1:15 pm CST on Thursday June 8, 2023 at the City/County Purchasing Department located at 1 N. W. Martin Luther King Jr. Boulevard, Room 323, Evansville, IN 47708. Bids may also be submitted to the Board of Public Works personnel until 1:30 pm CST the day of the bid opening in Room 301.

Bid Packages can be obtained on the City/County Purchasing Department Webpage at: [Requests for Bids/Quotes / City of Evansville \(evansville.gov\)](https://www.evansville.gov/requests-for-bids-quotes) .

**SCOPE**

It is the intent of this Invitation for Bids to establish a 12-month agreement with the ability to extend for three (3), one-year periods for waste removal service (dumpsters).

**ESTIMATED QUANTITIES**

There are approximately one hundred and ninety (190) in the winter and three hundred and twenty-three (323) during Parks season peak.

No maximum or minimum quantities or locations are guaranteed, suggested quantities/locations represent historical usage. The City of Evansville/Vanderburgh County anticipates utilization of the quantities/locations as specified. These are approximate and represent the estimated requirement. The City/County reserves the right to request more or less than what is listed, depending upon actual requirements and budget restraints, at the unit costs as set forth in the Successful Bidder's bid/contract(s). The list of anticipated can be found on page six (6) of this IFB.

Waste removal (i.e. lifts) shall occur at the frequency specified by the individual City/County departments. For Parks and Recreation 90 gal "Totes", if the Vendor is unable to complete a lift on the scheduled day of service due to holiday or weather, the vendor will be responsible for completing the lift within 48 hours.

**COST OF PREPARATION**

Each vendor shall be responsible for all costs incurred in order to prepare and submit their response to this IFB.

**BIDS**

1. All prices shall be F.O.B. to various City/County sites in Vanderburgh County, Indiana. Prices must include delivery. No additional monies will be paid for delivery.
2. Firm bids are required unless specifically designated otherwise. Any bid which is subject to an open or unlimited escalator clause may be rejected. A maximum figure for escalation shown or a method of

computing the total cost over a specified time period must be included.

3. Bids shall be awarded to the lowest responsive and responsible bidder taking into consideration reliability, productivity, cost of maintenance, quality, performance and time of delivery.
4. Funding sources for this agreement are reviewed on an annual basis with funds being appropriated by either the City Council and/or County Council. The City of Evansville/Vanderburgh County Commissioners, nor City/County departments/offices, shall be under any obligation to continue under this contract if annual funding for this purpose is discontinued by the appropriate governing body.

**BID BOND**

- A. As Bid Bond in the amount of five percent (5%) of the total bid shall accompany each bid as a guarantee that all provisions of the specifications shall be met.
- B. Bid Bonds and Checks will be returned to the unsuccessful Vendor(s) after award of purchase by the Board and to the successful Vendor(s) after the performance bond, if required, has been received and accepted.
- C. Bid Bonds must be executed by a corporate surety licensed under the laws of Indiana to execute such bonds. The surety must be a corporate surety authorized to do business in Indiana and Power of Attorney must accompany the Bid Bond.

**PUBLIC OPENING PROCEDURES**

The purpose of a public opening is for a reading of responses received. Under normal circumstances, no award will be made or implied at this time, unless otherwise indicated.

- A. Only the following information will be given:
  - o Vendor name
  - o Bid Category
  - o Bid Amount(s)
- B. A copy of the bid tabulation will be available to review in the Purchasing Department upon completion of the recommended award.

Vendors who wish to review or request copies of quotes may do so by contacting the Purchasing Department. A copy fee will be charged for copies.

**RIGHT OF REJECTION**

The City/County reserves the right to reject any one or all bids, or any part of any bid, to waive any informality in any bid, and to award the purchase in the best interest of the City/County. Furthermore, the City/County reserves the right to hold the bid of the three (3) lowest vendors for a period of ninety (90) calendar days from the time of the due date of bid.

**BID SUBMITTAL**

1. ALL BIDS MUST BE RECEIVED ON OR BEFORE THE TIME AND DATE INDICATED IN THE NOTICE TO BIDDERS. The responsibility for submitting bids to the City/County is solely that of the bidder. The City/County will not be responsible for delays in mail delivery or delays caused by any other occurrence. LATE BIDS WILL NOT BE ACCEPTED.
2. The Bidder(s) shall submit their bid(s) in the provided table, supplying all the required information. Failure to comply with this or any other paragraph of the Instructions to Bidders shall be sufficient reason for invalidation of the bid.

3. Bidders shall submit an original copy of their Bid and a thumb drive containing all Bid Documents.
4. Bidders are required to provide all requested information. Bid submittal should be submitted in a sealed envelope showing the bidder's name, business address, bid title: APA-IFB-002-23, date and time of opening on the front of the envelope. Only information provided inside this envelope will be considered, unless otherwise instructed. Failure to follow this instruction or any other instruction contained in this Invitation for Bid may result in the rejection of your bid.
5. Bid modifications are not allowed. Complete withdrawal or complete exchange of bid is acceptable, if done before scheduled bid opening.
6. All bids must be signed by an authorized official of the firm. Bids may be rejected if they show any omissions, alterations of form, additions not called for, conditional bid, or any exceptions or irregularities of any kind.
7. Do not include taxes in bid figures. The City/County are exempt from state and federal taxes. Exemption certificates will be provided upon request.

### **INQUIRIES**

1. Please direct any inquiries concerning this bid to the City-County Purchasing Department, Dachenae Streeter via email at [dstreeter@evansville.in.gov](mailto:dstreeter@evansville.in.gov).
2. All changes in specifications shall be in writing in the form of an addendum and furnished to all bidders. Verbal information obtained otherwise will not be considered in awarding of bids. No changes to specifications will be permitted within five (5) days prior to the bid opening.

### **EQUAL EMPLOYMENT OPPORTUNITY**

The Equal Employment Opportunity Statement included herein is a condition of the bid. The contract must be signed by the successful Vendor and the City/County; and the successful Vendor must comply with the equal employment opportunity condition in the execution of the contract.

### **LAWS**

Vendors shall comply with all applicable Federal, State, County and City laws, ordinances and regulations applicable to the bid and performance of the contract(s).

### **SPECIFICATIONS**

Vendors shall ensure that they have full understanding of the requirements for this project. After bids have been submitted, the Vendor shall not assert that there was a misunderstanding concerning the quantities of work or of the nature of the work to be done.

### **PERFORMANCE BOND**

#### **Vendors may be required to submit a Performance Bond during contract negotiations.**

In the event that the CITY/COUNTY enters into final contract negotiations with a vendor or vendors, the CITY/COUNTY reserves the right to require vendor(s) to provide a performance bond up to 100% of the contracted amount, which may be used to satisfy any direct damages to the CITY or COUNTY resulting from a vendor's failure and/or refusal to engage in good faith negotiations and/or honor the terms of its proposal and/or contract. The bond must remain in effect for the duration of the contract.

It shall be the offeror's responsibility to read this entire document (terms and conditions, instructions), review all enclosures and attachments, and comply with all requirements specified herein. Not doing so could result in offeror's proposal being designated as unresponsive.

**All prices shall be F.O.B. to various City/County sites in Vanderburgh County, Indiana.**

1. Bids shall be awarded to the lowest responsive and responsible bidder taking into consideration reliability, productivity, cost of maintenance, quality, performance and time of delivery. Past performance will also be a determining factor.
2. The City of Evansville reserves the right to award the bid on a line item basis or lump sum basis whichever is in the best interest of the City/County.
3. Firm bids are required unless specifically designated otherwise. Any bid which is subject to an open or unlimited escalator clause may be rejected. A maximum figure for escalation shown or a method of computing the total cost over a specified time period must be included.
4. The vendor shall state any discounts to apply. Discounts must be shown for individual items unless all items have the same percentage of discount.

Funding sources for this agreement are reviewed on an annual basis with funds being appropriated by either the City Council and/or County Council. The City of Evansville/Vanderburgh County Commissioners, nor City/County departments/offices, shall be under any obligation to continue under this contract if annual funding for this purpose is discontinued by the appropriate governing body

**EXCUSED PERFORMANCE**

Neither party shall be liable for its failure to perform or delay in performance of services due to contingencies beyond its control including, but not limited to, strikes, riots, fires, natural disasters, etc. Should the successful Bidder fail to perform for any reason, no charges shall be made to the applicable department for the period of time in which service was not provided.

**ASSIGNMENT**

Neither party shall assign this contract without the prior written consent of the other party.

**1. PROOF OF INSURANCE**

The Contractor shall furnish the Owner with satisfactory proof of coverage of the insurance required, in a reliable company or companies to be approved by the Owner, licensed to do business in the State of Indiana, before commencing any Work. Such proof shall consist of certificates executed by the respective insurance companies, filed with the Owner. The certificates of insurance shall show the name and address of the Company, expiration date or dates, and the policy number or numbers. The Owner reserves the right to require complete, certified copies of all required insurance policies at any time.

Proof of insurance shall be maintained up to date, and failure to maintain adequate coverage and proof shall be deemed sufficient reason for cancellation of the Contract. All insurance shall provide that the policy shall not be canceled, terminated or modified unless thirty (30) days prior to such cancellation, termination or modification written notice is given to the Owner. No policy may be modified, terminated or canceled by the Contractor without the prior written approval of the Owner.

**2. PROTECTION OF WORK AND PROPERTY**

The Contractor shall continuously maintain adequate protection and security of the cleanup sites, and shall indemnify the property of the Owner and any adjacent property from injury, damage, loss or claim, including a claim for attorney's fees, arising in connection with this Contract. The Contractor shall exercise due diligence at all times in protection of persons and property from injury. The Contractor shall promptly notify the Owner of any accidents arising in the course of operations under the Contract causing bodily injury or property damage.

The Contractor will be responsible for any and all damage to person(s) or property, public or private, that may be caused by their operation in the performance of this Contract, and the Contractor shall defend any suit that may be brought against himself or the Owner on account of damage inflicted by their operations, and shall be liable for any attorney's fees incurred by the Owner, and any judgments awarded against the Owner, Contractor or Subcontractor(s) employed by the Contractor arising from such damage.

**3. TERMINATION FOR BREACH**

In the event that any provision of this Contract is violated by the Contractor or by any of their Subcontractor(s), or if the Contractor should become a debtor in a bankruptcy proceedings, or if he should make a general assignment of their assets for the benefit of their creditors, or if a receiver should be appointed for any reason on account of their insolvency, or if he should persistently or repeatedly fail to supply sufficiently skilled workmen or proper

materials as required by the Specifications and Contract Documents, or if Contractor should disregard the instruction of the Owner, then the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate this Contract, specifying the reasons for such intent to terminate. If, within ten (10) days after the serving of such notice, the Contractor has failed to correct the listed deficiencies to the satisfaction of the Owner, the Contractor shall be deemed in default. In the event of default, the Contract shall be deemed terminated; the Owner shall immediately serve notice thereof upon the Contractor and Surety. The Surety shall then take over and perform the Contract, provided, however, that if the Surety does not commence performance thereof within thirty (30) days from the date of the mailing to such Surety of notice of termination, the Owner may take over the Work and prosecute the same to completion. The Contractor and the Surety shall be jointly liable for all expenses, including but not limited to labor, materials, administrative expense and attorney's fees, incurred by the Owner in completing the Contract, and recovering the costs associated therewith.

**Bid Proposal Form**  
**WASTE REMOVAL SERVICE (DUMPSTERS)**  
**APA-IFB-002-23**

**Sealed Bids shall be received no later than 1:30 PM CST on Thursday June 8, 2023 in Room 301 of the Civic Center Complex, 1 NW Martin Luther King Jr. Blvd, Evansville, IN 47708.** Sealed bids may be received prior to the scheduled opening to the Room 323 (Purchasing Department) located in Civic Center Complex, 1 N.W. Martin Luther King Jr. Boulevard, Evansville, Indiana 47708. Bids submitted to the city Purchasing Department shall be submitted prior to 1:15 P.M. on Thursday, June 8, 2023. The undersigned proposes and agrees to furnish any or all items bid and to deliver them to the specific destination at the prices stated herein. Please use the **Bid Proposal Worksheet** that was provided with the bid package.

**-DO NOT SUBSTITUTE THIS PAGE-**

# BID PROPOSAL WORKSHEET

APA-IFB-002-23

## WASTE REMOVAL SERVICE (DUMPSTERS)

SIZE/TYPE	QUANTITY NEEDED	PRICE PER EACH NUMERIAL	PRICE PER EACH WRITTEN AMOUNT
2-yard dumpster	15		
4-yard dumpster	9		
6-yard dumpster	10		
8-yard dumpster	6		
20-yard dumpster	2		
95/96-gallon Recycling Bin	2		
90- gallon Trash Totes			
Winter :	145		
Peak :	278		
Price per Ton: Scrap Metal	N/A		
Price per Ton: Hazardous Waste	N/A		

Prices are firm through entire length of contract, from date of award for 12 months with the potential of three (3) one-year extensions? \_\_\_ Yes \_\_\_ No

Please note any exceptions here (attach another sheet if necessary): \_\_\_\_\_

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THE UNDERSIGNED HEREBY CERTIFIES THAT ITEMS FURNISHED AS A RESULT OF THIS BID WILL BE IN FULL ACCORDANCE WITH THE CITY OF EVANSVILLE/VANDERBURGH COUNTY SPECIFICATIONS APPLYING THERETO UNLESS EXCEPTIONS ARE STATED ABOVE.

BIDDING COMPANY: \_\_\_\_\_

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME & TITLE (PLEASE PRINT)

\_\_\_\_\_  
TELEPHONE

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
FAX NUMBER

\_\_\_\_\_  
ADDRESS (STREET)

\_\_\_\_\_  
EMAIL ADDRESS

\_\_\_\_\_  
CITY, STATE, ZIP CODE

\_\_\_\_\_  
FEDERAL ID NUMBER

**-DO NOT SUBSTITUTE THIS PAGE-**

In an effort to increase business opportunities for minorities and women in our community and to promote diversity and equal opportunity in our business relationships, the CITY and COUNTY encourage all offerors to allow certified Minority Owned Business Enterprises and Woman Owned Business Enterprises (“WBE”) to participate in this opportunity between vendor and CITY/COUNTY. Please complete the following:

## STATEMENT OF PROPOSED M/WBE UTILIZATION (FORM A)

Bid Package \_\_\_\_\_  
 Will Bidder's firm be supplying all of the products/services to be purchased? Yes \_\_\_\_\_ No \_\_\_\_\_ OR In the case of a construction project will Bidder be doing all of the work with its own forces? Yes \_\_\_\_\_ No \_\_\_\_\_ If no, what percentage of work will Bidder self perform? \_\_\_\_\_  
 Is Bidder certified as a Minority/Women Business Enterprise (M/WBE)? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, which MBE \_\_\_\_\_ WBE \_\_\_\_\_

List below all proposed M/WBE Subcontractors and Suppliers to be used for the work. Total dollar amount and percentage must equal that on the Bid form. Clearly indicate in the Scope of Work column if the M/WBE will be a supplier only. Also, if M/WBE will contract with a Subcontractor or Bidder and not directly with the Bidder, indicate “Subcontractor of \_\_\_\_\_” or similar statement in the Scope of Work column. Use additional sheets if necessary.

M/WBE Company Name Address, Phone, Contact & Email	MBE or WBE	% of Bid	Dollar Amount	Scope of Work or Commodity to be Supplied	Base Bid Amount

Bidder's Company Name \_\_\_\_\_ Signature (of Corporate Officer) \_\_\_\_\_  
 Date \_\_\_\_\_ Name & Title (Print) \_\_\_\_\_  
 Total Dollar Amount \$ \_\_\_\_\_  
 Total MBE Participation \$ \_\_\_\_\_  
 Total WBE Participation \$ \_\_\_\_\_ Number of City / County Ordinance \_\_\_\_\_



**Affidavit**  
**E-Verify Program**

The undersigned being duly sworn upon their oath, now says that I, \_\_\_\_\_(name), \_\_\_\_\_  
\_\_\_\_\_(title/position) at \_\_\_\_\_, (Company) do hereby state that  
\_\_\_\_\_(Company) does not knowingly employ unauthorized aliens and  
participates in the E-Verify Program (I.C. 22-5-1.7), when it hires new employees to confirm their work eligibility.

**I swear or affirm, under the penalties for perjury, that the foregoing statements are true.**

\_\_\_\_\_  
Signature of affiant

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Business Entity

**NON-COLLUSION AFFIDAVIT**

STATE OF INDIANA    )  
                                  ) ss:  
\_\_\_\_\_ COUNTY)

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by bidder, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to induce anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

Bidder further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale.

\_\_\_\_\_  
Bidder (Firm)

\_\_\_\_\_  
Signature of Bidder or Agent

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

My Commission Expires: \_\_\_\_\_

County of Residence: \_\_\_\_\_



**CITY OF EVANSVILLE  
Metropolitan Evansville Transit System  
601 John Street  
Evansville, Indiana 47713**

Phone (812) 435-6166 Fax (812) 435-6159  
TDD/Hearing Impaired - please use Relay Indiana 1-800-743-3333

Todd M. Robertson  
**Executive Director**

Lloyd Winnecke  
**Mayor**

Jonathan M Siebeking  
**Director**

**METS REQUEST FOR PRICE QUOTES-**

If vendor price quote total is over \$3,000 (construction quotes over \$2,000) and is accepted by METS, vendor agrees to follow the specific third-party contract provisions required for each third-party contract including requirements that each third-party contractor extend those provisions to the third-party contractor's subcontractors according to *FTA Required Federal Clauses, C(circular) 4220.1F*, and according to 49CFR and 2 CFR 200.

Reference Appendix A1 for details regarding Required Federal Clauses

**METS REQUEST FOR PRICE QUOTES-**

**Name of Project:** \_\_\_\_\_ **Date Quotes Sent:** \_\_\_\_\_

Name of Vendor: \_\_\_\_\_

Date of Quote: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_  
Printed Name of Person Giving Quote & Acceptance of Required Federal Clauses in Appendix A1

\_\_\_\_\_  
Date: \_\_\_\_\_  
Signature of Person Giving Quote & Acceptance of Required Clauses in Appendix A1

Date Quote Received back from vendor \_\_\_\_\_ By: \_\_\_\_\_  
Procurer from METS

This purchase is to conform to 49 CFR Part 18 and 2 CFR 200.

**If the above transaction exceeds \$25,000, has METS Procurer searched the System for Award Management (SAM) website (<https://www.sam.gov/>) to ensure that excluded parties do not participate in the above transactions? YES \_\_\_\_\_  
NO \_\_\_\_\_ Manager must attach printout of the results of the search.**

\_\_\_\_\_

## FEDERAL TRANSIT ADMINISTRATION (FTA) CLAUSES

These clauses are required because this procurement is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in these clauses are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirements in these clauses are inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in these clauses shall prevail.

### ARTICLE FTA-1. DEFINITIONS

**1.1 C.F.R.** : The acronym referring to the United States Code of Federal Regulations, which contains regulations applicable to FTA grant recipients and their Vendors and subcontractors.

**1.2 DOT** : The acronym referring to the United States Department of Transportation. Also represented as USDOT.

**1.3 EPA** : The acronym referring to the United States Environmental Protection Agency. Also represented as USEPA.

**1.4 FTA** : The acronym referring to the Federal Transit Administration, a public transit regulatory unit of the USDOT, formerly known as the Urban Mass Transit Administration.

**1.5 U.S.C.** : The acronym referring to the United States Code.

### ARTICLE FTA-2. ACCESS TO RECORDS, ACCESS TO CONSTRUCTION SITE, AND MAINTENANCE OF RECORDS

**2.1 Access to Records.** The VENDOR agrees to provide sufficient access to FTA and its Subcontractors to examine, inspect, and audit records and information related to performance of this Contract as reasonably may be required.

In accordance with 49 U.S.C. section 5325(g), the VENDOR agrees to provide METS, the Secretary of Transportation, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers, and records of the VENDOR which are directly pertinent to this Contract for the purposes of making audits, examinations, inspections, excerpts, and transcriptions

The VENDOR also agrees, pursuant to 49 C.F.R. section 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight ("PMO") Vendor, access to the VENDOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. section 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309, or 5311

**2.2 Access to the Sites of Performance.** The VENDOR agrees to permit FTA and its Vendors access to the sites of performance under this Contract as may reasonably may be required

**2.3 Reproduction of Documents.** The VENDOR will retain, and will require its subcontractor at all tiers to retain, complete and readily accessible records related in whole or in part to this

Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontractor, arrangements, other third-party agreements of any type, and supporting materials related to those records.

**2.4 Retention Period.** The VENDOR agrees to comply with the record retention requirements in accordance with 2 C.F.R section 200.333. The VENDOR shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than 3 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 records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.

The expiration or termination of this Contract does not alter the record retention or access requirements of this Section

### **ARTICLE FTA-3. BUY AMERICA**

These provisions of this Article FTA-3 apply if the value of this Contract (including the value of any amendments) exceeds \$150,000.

**3.1 Buy America Provision.** The VENDOR agrees to comply with 49 U.S.C section 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless iron, steel, 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 C.F.R. §section 661.7.

*Build America, Buy America Act.* Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented from time to time by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The VENDOR acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

### **ARTICLE FTA-4. CARGO PREFERENCE**

**4.1 Cargo Preference—Use of United States-Flag Vessels** the VENDOR agrees:

- 4.1.1 To use privately owned United States-Flag commercial vessels to ship at least 50 % of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- 4.1.2 To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in Section 4.1.1 above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to METS; (through the VENDOR in the case of a lower-tier participating Subcontractor's bill of lading); and
- 4.1.3 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.

- 4.2 Fly America Requirements** The VENDOR agrees to comply with 49 U.S.C. 40118 (the “Fly America Act”) in accordance with the General Services Administration’s regulations at 41 C.F.R part 301- 10, which provide that recipients and subrecipients of Federal funds and their Vendors 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 VENDOR 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 VENDOR agrees to include the requirements of this section FTA-4.2 in all subcontracts that may involve international air transportation.

#### **ARTICLE FTA-5. EMPLOYEE PROTECTIONS - Not Applicable**

#### **ARTICLE FTA-6. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION**

- 6.1** The VENDOR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200 during the term of this Contract. By signing this Contract, the Consultant certifies that neither it nor its principals, affiliates, or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this Contract by any Federal department or agency. This certification is a material representation of fact upon which METS relies in entering this Contract. If it is later determined that the VENDOR knowingly rendered an erroneous certification, in addition to other remedies available to METS, the Federal Government may pursue available remedies, including suspension or debarment or both. The VENDOR shall provide to METS immediate written notice if at any time the VENDOR learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The VENDOR will include a provision requiring such compliance in its lower tier covered transactions.

#### **ARTICLE FTA-7. ENVIRONMENTAL STANDARDS AND PRACTICES**

- 7.1 Clean Water Act.** For any project of \$150,000 or more, the VENDOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. sections 1251-1387. The VENDOR agrees to report each violation to METS and understands and agrees that METS will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (“EPA”) Regional Office. The VENDOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.
- 7.2 Clean Air Act Compliance.** For any project of \$150,000 or more, the VENDOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. sections 7401-7671q. The VENDOR agrees to report each violation METS and understands and agrees that METS will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The VENDOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

- 7.3 Energy Conservation.** The VENDOR 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 Federal Energy Policy and Conservation Act.
- 7.4 Recovered Materials.** The VENDOR agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with all the requirements of Section 6002 of the Resource Conservation and Recovery Act ("RCRA") as amended (42U.S.C. section 6962) and U.S. Environmental Protection Agency, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

#### **ARTICLE FTA-8. LOBBYING RESTRICTIONS**

For any project of \$100,000 or more, the VENDOR is required to make the following certifications. The VENDOR must also require its Vendors or subcontractors to make the following certification in any Contracts or subcontracts valued at or above \$100,000.

- 8.1 Certification of Restrictions on Lobbying; Disclosure.** The VENDOR certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid by or on behalf of the VENDOR 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.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the VENDOR shall complete and submit the "Certification of Restrictions on Lobbying" form.

The VENDOR shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which METS has relied to enter this Contract. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. section 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By its signature on this Contract, the VENDOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, VENDOR understands and agrees that the provisions of 31 U.S.C. Section 3801, *et seq.*, apply to this certification and disclosure, if any.

**ARTICLE FTA-9. SEISMIC SAFETY – Not applicable**

**ARTICLE FTA-10. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS**

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

**ARTICLE FTA-11. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

**11.1 Program Fraud and False or Fraudulent Statements or Related Acts.** The VENDOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. section 3801 *et seq.*, and USDOT regulations, "*Program Fraud Civil Remedies*," 49 C.F.R. part 31, apply to its actions pertaining to this Contract. Upon execution of this Contract, the VENDOR 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 work is being performed. In addition to other penalties that may be applicable, the VENDOR 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 VENDOR to the extent the Federal Government deems appropriate.

The VENDOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. section 1001 and 49 U.S.C. section 5323(l) on the VENDOR, to the extent the Federal Government deems appropriate.

The VENDOR agrees to include the above language in each subcontract under this contract, modified only to identify the Subcontractor that will be subject to the provisions.

**ARTICLE FTA-12. CIVIL RIGHTS**

Under this Contract, the VENDOR shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part hereof.

**12.1 Nondiscrimination.**

**12.1.1 Nondiscrimination in Employment.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination

Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the VENDOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity), age, or disability. In addition, the VENDOR agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

**12.1.2 Nondiscrimination in Contracting.** The VENDOR agrees and assures that it will abide by the following conditions, and that it will include the following assurance in every sub agreement and third-party contract it signs: (1) The VENDOR must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted sub agreement, third party contract, or third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26; and (2) the VENDOR must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT- assisted sub agreements, third party contracts, and third-party subcontracts, as applicable.

**12.2 Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:

**12.2.1 Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 200e et seq., and federal transit laws at 49 U.S.C. § 5332, the VENDOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. section 2000e note, as further amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. section 2000e note. The VENDOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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 VENDOR agrees to comply with any implementing requirements FTA may issue.

**12.2.2 Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. sections 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. section 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90 and Federal transit law at 49 U.S.C. section 5332, the VENDOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the VENDOR agrees to comply with any implementing requirements FTA may issue.

**12.2.3 Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794, the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 *et seq.*, and Federal transit law at 49 U.S.C. section 5332, the VENDOR agrees that it will not discriminate against individuals on the basis of disability. In addition, the VENDOR agrees to comply with the requirements of U.S. Equal Employment Opportunity commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, and any implementing requirements FTA may issue. The VENDOR will also ensure that accessible facilities (including vehicles and buildings) and services are made available to individuals with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. section 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 *et seq.*, and any applicable implementing regulations.

**12.3 Inclusion in Subcontracts.** The VENDOR agrees to include the requirements of this article FTA-12 in each subcontract under this contract, modified only to identify the Subcontractor that will be subject to the provisions.

#### **ARTICLE FTA-13. GENERAL PROVISIONS**

**13.1 Federal Changes.** The VENDOR shall comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the agreement between METS and FTA. The VENDOR's failure to comply with applicable FTA regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this contract, shall constitute a material breach of this contract.

**13.2 No Obligation by the Federal Government.** METS and the VENDOR 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 METS, VENDOR, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from this Contract.

The VENDOR agrees to include the preceding clause in each subcontract under this Contract, modified only to identify the Subcontractor that will be subject to the provisions.

**13.3 Incorporation of FTA Terms.** Specific provisions in this Contract include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in the most recent addition and any revisions of FTA Circular 4220.1 "Third Party Contracting Guidance," to the extent consistent with applicable federal laws, and in Appendix II of 2 C.F.R. part 200 are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The VENDOR shall not perform any act, fail to perform any act, or refuse to comply with any

METS requests which would cause METS to be in violation of the FTA terms and conditions.

#### **ARTICLE FTA-14. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

- 14.1 Nondiscrimination.** Pursuant to 49 CFR part 26, the VENDOR, sub-recipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The VENDOR shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the VENDOR 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 METS deems appropriate. The VENDOR shall include this requirement in all subcontracts pursuant to this contract.
- 14.2 Prompt Payment.**
- 14.2.1 Reserved.
- 14.2.2 The VENDOR agrees to pay Subcontractors within ten (10) calendar days of the VENDOR's receipt of payment from METS for undisputed services provided by the Subcontractor. The VENDOR agrees to pay Subcontractors all undisputed retainage payments within ten (10) calendar days of completion of the work regardless of whether the VENDOR has received any retainage payment from METS. The VENDOR shall not postpone or delay any undisputed payments owed Subcontractors without good cause and without prior written consent of METS.
- 14.2.3 The VENDOR shall not, by reason of said payments, be relieved from responsibility for Work done by the Subcontractor and shall be responsible for the entire Work under this contract until the same is finally accepted by METS.
- 14.2.4 The VENDOR agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- 14.2.5 The VENDOR will not be reimbursed for work performed by Subcontractors unless and until the VENDOR ensures that Subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this section FTA-14.2 may result in METS finding the VENDOR in noncompliance with the DBE provisions of this Contract.
- 14.3 DBE Good Faith Efforts** During the term of this contract, the VENDOR will continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform under the contract, and that the VENDOR meets its DBE commitment as set forth in its bid. These efforts shall include, without limitation, the following:
- 14.3.1 If the VENDOR requests substitution of a DBE subcontractor or supplier listed in its **Disadvantaged Business Enterprise Information and Certifications** form, the VENDOR shall exert good faith efforts to replace the DBE firm with another DBE firm subject to approval of METS.

- 14.3.2 The VENDOR shall not terminate for convenience any DBE Subcontractor or supplier listed in its **Disadvantaged Business Enterprise Information and Certifications** form (or an approved substitute DBE firm) and then perform the work itself or with its affiliates without prior written consent of METS.
- 14.3.3 If a DBE subcontractor or supplier is terminated or fails to complete its work on the contract for any reason, the VENDOR shall make good faith efforts to find another DBE firm to substitute for the original DBE firm.
- 14.3.4 Failure to comply with the provisions of this section FTA-14.3 may result in METS finding the VENDOR in noncompliance with the DBE provisions of this Contract and the imposition of Administrative Sanctions described in section FTA-14.6.

#### **14.4 Reporting.**

- 14.4.1 The VENDOR will submit monthly progress reports to METS reflecting its DBE participation.
- 14.4.2 All DBE billing, submitted during the reporting period, must be finalized and reported to METS prior to submission of the VENDOR'S payment application.
- 14.4.3 Any changes to the DBE Subcontractor list or their amounts must be reported to METS. Changes include; DBE firms removed, DBE firms added, changes to subcontract amounts, and DBE credit adjustments.
- 14.4.4 All payments made to DBE firms must be finalized and reported to METS within 10 days of receipt of payment from METS.
- 14.4.5 Failure to submit this report in a timely manner will result in a penalty of \$10 per late day per report and may also result in the imposition of Administrative Sanctions under section FTA-14.6, pursuant to METS' DBE policy and USDOT regulations. For the purposes of this section FTA-14.4, timely submittal means notice to METS Project Manager by the close of business on the fifteenth (15<sup>th</sup>) of the following month.

#### **14.5 Review of Good Faith Efforts.**

- 14.5.1 METS Equal Opportunity Officer will review the VENDOR's DBE progress reports to monitor and determine whether the utilization of DBE firms is consistent with the commitment of the VENDOR as stated in its bid.
- 14.5.2 If it is determined that the VENDOR's DBE utilization under the contract is not consistent with its commitment, the VENDOR will be requested, in writing, to submit evidence of its good faith efforts to meet the commitment. The VENDOR shall be given ten (10) working days to submit this documentation. Failure to respond shall place the VENDOR in non-compliance and subject to imposition of Administrative Sanctions as described in section FTA- 14.6.
- 14.5.3 The VENDOR's good faith efforts documentation will then be reviewed for accuracy, sufficiency and internal consistency. METS' staff shall make a determination as to the adequacy of the VENDOR's good faith efforts documentation and so inform the VENDOR. If it is determined that the VENDOR's good faith efforts documentation is acceptable, the VENDOR will be deemed to be in compliance with the DBE program.
- 14.5.4 If it is determined that the VENDOR's good faith efforts documentation is not acceptable, the VENDOR will be notified and be deemed to be in non-compliance with the DBE program.
- 14.5.5 Non-compliance by the VENDOR with the requirements of federal DBE regulations (49 CFR part 26) constitutes a breach of contract and may result in imposition of Administrative Sanctions as described in section FTA-14.6.

#### **14.6 Administrative Sanctions.**

- 14.6.1 If METS deems the VENDOR to be in non-compliance with the DBE requirements of this contract, METS will inform the VENDOR in writing, by certified mail, that sanctions shall be imposed for failure to meet DBE utilization goals and/or failure to submit documentation of good faith efforts. The notice will state the specific sanction to be imposed.
- 14.6.2 The VENDOR has five (5) working days from the date of the notice to file a written appeal to METS' Director. Failure to respond within the five (5) day period shall constitute a waiver of appeal. The Director or designee, at his or her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within five (5) working days of receipt of the written appeal. There shall be no right of appeal to METS governing board.
- 14.6.3 Sanctions may include, without limitation: suspension of any payment or part due to the VENDOR for work that was identified to be performed by a DBE at the time of contract award, or of any monies held by METS as retained on the contract; denial to the VENDOR (including its principal and key personnel) of the right to participate in future contracts of METS for a period of up to three years; and/or termination of the contract for cause.

**ARTICLE FTA-15. VETERANS PREFERENCE – Not Applicable**

**ARTICLE FTA-16. EXECUTIVE ORDER – SPECIAL DEPARTMENT OF LABOR EQUAL  
EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION  
PROJECTS – Not Applicable**

**ARTICLE FTA-17. INTELLECTUAL PROPERTY RIGHTS – Not  
Applicable**

**ARTICLE FTA-18. SAFE OPERATION OF MOTOR VEHICLES**

**18.1 Seat Belt Use.** The VENDOR agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and
- (2) Including a "Seat Belt Use" provision in each third-party agreement related to this Contract.

**18.2 Distracted Driving, Including Text Messaging While Driving.** The VENDOR agrees to implement Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and U.S. DOT Special Provision pertaining to Distracted Driving by:

- (1) The VENDOR agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the VENDOR owns, leases, or rents, or a privately-owned vehicle when on official business in connection with this Contract or when performing any work for or on behalf of this Contract.
- (2) The VENDOR agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- (3) The VENDOR agrees to include the preceding "Distracted Driving, Including Text Messaging While Driving" provisions in each third-party agreement related to this Contract.

## ARTICLE FTA-19. TELECOMMUNICATIONS CERTIFICATION

The VENDOR certifies through the signing of this contract that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), the VENDOR does not and will not use any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. The VENDOR will include this certification as a flow down clause in any contract related to this Contract.

## ARTICLE FTA-20. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

**20.1** When applicable contracts in excess of \$175,000, and all nonprocurement transaction, as defined in 2 C.F.R. §§ 180.220 and 1200.220, in excess of \$25,000 will contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where VENDORS violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures. Specific language for dispute resolution will be provided in any resultant contract of the successful proposer.

**20.2** ***Notification to FTA; Flow Down Requirement.*** If a current or prospective legal matter that may affect the Federal Government emerges, the VENDOR must promptly notify METS and FTA's Region 5 Office's FTA Chief Counsel and Regional Counsel. The VENDOR must include these requirements as a flow down clause in any subcontract related to this Contract.

20.2.1 The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

### Instructions to Bidder

- 1. READ, REVIEW AND COMPLY:** It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
- 2. LANGUAGE, WORDS USED INTERCHANGEABLY:** Throughout the Instructions to Bidders, the Standard Terms and Conditions, and the Scope of Work, the following shall apply:
  - CITY refers to the City of Evansville, Indiana
  - COUNTY refers to Vanderburgh County, Indiana
  - BIDDER refers to the Company, firm, corporation, partnership, individual, vendor, etc. submitting an offer to sell its goods or services to the CITY/COUNTY
  - The words QUOTATION, QUOTE, BID and PROPOSAL are all offers from a BIDDER but may represent different methods of obtaining price and other information from the BIDDER
  - Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 3. NOTICE TO BIDDERS:** All bids are subject to the provisions of the Instructions to Bidders, special terms and conditions specific to this Invitation for Bids, the specifications, and the CITY/COUNTY General Contract Terms and Conditions. The CITY/COUNTY objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any language appearing in or attached to the document as part of the responder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.** By execution and delivery of this document, the responder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or

effect.

4. **BID PROPOSAL:** Failure to sign proposal section will render bid invalid.
5. **TIME FOR CONSIDERATION:** Unless otherwise indicated in the Bid Proposal section of this document, the offer shall be valid for 60 days from the date of bid opening. Preference may be given to bids allowing over 60 days for consideration and acceptance.
6. **PROMPT PAYMENT DISCOUNTS:** Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
7. **SPECIFICATIONS:** All bids/quotes submitted should be as closely sized, equipped, etc. to the desired specifications. Any exceptions to the specifications will be evaluated based on the best interest of the CITY/COUNTY. Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and bidder will be held responsible therefore. Deviations shall be explained in detail.  
**The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**
8. **PROCUREMENT STATEMENT OF NON-PREFERENCE:** It is the intent of the CITY/COUNTY to procure a product and/or service in the size, quality, and parameters of the following specifications. Sometimes, for facilitation of bidding/quoting procedures only, a certain manufacturer, product, or vendor will be utilized to help streamline this process. However, The CITY/COUNTY invites and encourages all other qualified bidders to submit equivalent bids/quotes. The primary purpose is to ensure that no interested party is excluded or limited from the bidding/quoting process.
9. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) CITY/COUNTY Contract Terms and Conditions, and (4) Instructions to Bidders.
10. **INFORMATION AND DESCRIPTIVE LITERATURE:** Bidder is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each bidder must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous offer will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection.
11. **MANUFACTURER DATA:** If a requested item is a tangible or physical product, each BIDDER shall submit the following data:
  - Name of Manufacturer, Model Number and Supplier
  - A statement indicating whether the products are manufactured in the United States.
  - A statement listing the nearest factory authorized parts & service facility. Local service facility is preferred
  - A statement that the proposed material/equipment conform to the specifications or a statement indicating the exceptions to the specifications
  - If appropriate, a statement indicating whether the material/equipment conform to recognized mandated standards including, but not limited to, OSHA requirements or ANSI Standards, for that type of material/equipment. Include Material Safety Data Sheets (MSDA) when appropriate.
12. **RECYCLING AND SOURCE REDUCTION:** It is considered sound purchasing practice to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use. **Companies are strongly urged to bring to the attention of the purchasers at the CITY/COUNTY those products or packaging they offer which have recycled content and that are recyclable.**

13. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the CITY/COUNTY participating members directly. Any and all revisions to this document shall be made only by written addendum from the CITY/COUNTY. The responder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.

14. **BID SUBMITTAL: Include price in written Bids.**

**All bids must be received on or before the time and date indicated in the Notice to Bidders.** Late bids will not be considered and will be returned, unopened, to the bidder. The responsibility for submitting bids to the CITY/COUNTY is solely that of the bidder. The CITY/COUNTY will not be responsible for delays in mail delivery or delays caused by any other occurrence. **Late bids will not be accepted.**

The Bidder shall submit their bid(s) on the attached PROPOSAL FORM, supplying all the required information. Failure to comply with this or any other paragraph of the Instructions to Bidders shall be sufficient reason for invalidation of the bid.

Bids must be submitted on either the Bid Offer and Proposal Form or SBOA Form 96 which must be properly signed, dated and notarized to be accepted. Each Bidder shall submit an original and additional copies as required on the forms attached.

Bidders are required to provide all requested information. Bid submittals should be submitted in a sealed envelope showing the bidder's name, business address, bid title, date and time of opening on the front of the envelope. Only information provided inside this envelope will be considered, unless otherwise instructed. Failure to follow this instruction or any other instruction contained in this Invitation for Bids may result in the rejection of your bid.

Bid modifications are not allowed. Complete withdrawal or complete exchange of bid is acceptable, if done before scheduled bid opening.

All bids/quotes must be signed by an authorized official of the firm. Bids may be rejected if they show any omissions, alterations of form, additions not called for, conditional bid, or any exceptions or irregularities of any kind.

15. **PROOF OF INSURANCE:** Bidder, at its own expense, shall procure and maintain during the entire term of this Agreement and any extensions thereof, insurance so as to cover all risk which shall arise directly or indirectly from Bidder's obligations and activities. Satisfactory proof of coverage must be from a reliable company licensed to do business in the State of Indiana, before commencing any work. Such proof shall consist of certificates executed by the respective insurance companies, filed with the CITY/COUNTY and listing the City of Evansville and Vanderburgh County as additional insureds. The certificates of insurance shall show the name and address of the insurance company, expiration date or dates, and the policy number or numbers. The CITY/COUNTY reserves the right to require complete, certified copies of all required insurance policies at any time.

Proof of insurance shall be maintained up to date, and failure to maintain adequate coverage and proof shall be deemed sufficient reason for cancellation of the contract. All insurance shall provide that the policy shall not be canceled, terminated or modified unless thirty (30) days prior to such cancellation, termination or modification written notice is given to the CITY and COUNTY. No policy may be modified, terminated or canceled by the vendor without the prior written approval of the CITY and COUNTY.

16. **PUBLIC OPENING PROCEDURES:** The purpose of a public bid opening is for a reading of bids/quotes received. Under normal circumstances, no award will be made or implied at this time, unless otherwise indicated. Only the following information will be given: Vendor name and total price, except when award is made on a unit price basis / grand total for all or none items.

Bids or related documents may not be reviewed at the bid opening. No discussion of any nature concerning brand names, deliveries, samples, etc. can be entered into between any Purchasing personnel and any vendor during or after the bid opening until the evaluation of bids has been completed and a recommendation for award has been made.

A copy of the bid tabulation will be available for review upon completion of the recommended award. Vendors who wish to review or request copies of bids may do so by contacting the Purchasing Department. A copy fee will be charged for copies.

17. **ACCEPTANCE AND REJECTION:** The CITY and COUNTY reserve the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid that is in its best interest. If either a unit price or extended price is obviously in error or the other is obviously correct, the incorrect price will be disregarded.
18. **REFERENCES:** The CITY and COUNTY reserve the right to require a list of users of the exact item offered. The CITY and COUNTY may contact these users to determine quality level of the offered product and acceptability of the bid. Such information may be considered in the evaluation of the bid.
19. **BIDDER/OFFEROR QUALIFICATIONS:** If requested, Bidders/Offerors shall be required to submit satisfactory evidence that they have a practical knowledge of the particular supply/service bid and that they have the necessary financial resources to provide the proposed supply/service as described in the attached specifications. Bidders must possess the necessary occupational licenses(s) to perform such work. Bidders shall provide proof of insurance as specified.
20. **HISTORICALLY UNDERUTILIZED BUSINESSES:** The CITY/COUNTY invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled, in accordance with the policies and ordinances of the CITY and COUNTY.
21. **ADVERSARIAL PARTIES:** Any party responding to a bid, quote, or IRequest for Proposal for any contract with the CITY or COUNTY shall be required to disclose any current adversarial litigation, contract dispute, or other adversarial proceeding against the CITY or COUNTY. Any such disclosure of current adversarial litigation, contract dispute or other adversarial proceeding against the CITY or COUNTY shall be considered a factor in determining the qualification, responsiveness and responsibility of such party in responding to a bid, quote, or Request for Proposal; and the matter shall be referred to the Law Department for investigation and recommendation prior to the award of any contract.
22. **BOND REQUIREMENTS:** A Bid Bond, Certified Check, Cashier's Check or Bank Draft in the amount of \$1,000 shall accompany each bid as a guarantee that all provisions of the specifications shall be met. Bid Bonds and Checks will be returned to the unsuccessful Bidder(s) after award of purchase by the CITY/COUNTY, and to the successful Bidder(s) after the performance bond, if required, has been received and accepted. Bid Bonds must be executed by a corporate surety licensed under the laws of Indiana to execute such bonds. The surety must be a corporate surety authorized to do business in Indiana and Power of Attorney must accompany the Bid Bond. When specified, a Performance Bond in the amount of One Hundred percent (100%) of the total bid will be required of the successful bidder, prior to work beginning, as a guarantee that all provisions of the bid, specifications and resulting contract, shall be met. The Performance Bond is to be posted with the awarding body within ten (10) business days after bid award. Failure to post said Bond may result in the immediate revocation of Bid award. In place of the bond, a certified check or cashier's check in the full amount of the contract may be provided. Such deposits must be filed with the executed contract documents and made a part thereof. It shall be the responsibility of the bidder to include the cost of the Performance Bond in the bid. The CITY/COUNTY will not pay an additional amount at a later date.
23. **AWARD OF CONTRACT:** Bids/Quotes shall be awarded to the lowest responsive and responsible bidder taking into consideration reliability, productivity, and cost of maintenance, quality, performance and time of delivery. As directed by precedent, qualified bids will be evaluated and acceptance may be made of the lowest and best bid most advantageous to the CITY/COUNTY as determined upon consideration of such factors as:
  - prices offered
  - the quality of the articles offered
  - the general reputation and performance capabilities of the bidder
  - the substantial conformity with the specifications and other conditions set forth in the bid/quote
  - the suitability of the articles for the intended use

- the related services needed
- the date or dates of delivery and performance
- other factors deemed by the CITY/COUNTY to be pertinent or peculiar to the purchase in question.

Unless otherwise specified by the CITY/COUNTY or the bidder, the CITY/COUNTY reserves the right to accept any item or group of items on a multi-item bid. In addition, on TERM CONTRACTS, the CITY/COUNTY reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by the CITY/COUNTY to be pertinent or peculiar to the purchase in question.

24. **CONFIDENTIAL INFORMATION:** As provided by statute and rule, the CITY/COUNTY considers keeping trade secrets which the bidder does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as “CONFIDENTIAL” by the bidder. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by Indiana law.
25. **TAXES:**
- **FEDERAL:** All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the contractor will be executed and returned by the using agency.
  - **OTHER:** Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the Indiana Department of Revenue.
26. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the bidder’s expense. Request for the return of samples must be made within 10 days following date of bid opening. Otherwise, the samples will become the property of the CITY/COUNTY. Each individual sample must be labeled with the bidder’s name, bid number, and item number. A sample, on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
27. **PROTEST PROCEDURES:** When a Bidder wants to protest a contract award pursuant to this solicitation, they must submit a written request to the Director of Purchasing for the City of Evansville – Vanderburgh County. This request must be received within thirty (30) consecutive calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Bidders may call the purchasing official listed on the first page of this document to obtain a verbal status of contract award. If the Director of Purchasing can render a decision based on the facts without a meeting, a written response with a decision will be rendered within 10 consecutive calendar days of the receipt of the protest letter. If not, the Director of Purchasing will schedule a meeting with the protesting party to hear their complaint. This meeting will be held within 30 consecutive calendar days after receipt of the written protest. The Director of Purchasing will respond to the protesting party in writing with a decision within 30 consecutive calendar days from the date of the protest meeting. All decisions of the Director of Purchasing shall be the final administrative review.
28. **E-VERIFY:** Pursuant to Indiana Code 22-5-1.7-11(b)(2) the Bidder shall provide documentation that it is enrolled and is participating in the E-Verify program. Bidder is required to submit proof from the E-Verify Program that it is currently enrolled in the Program. An example of confirmation is the confirmation e-mail received from E-Verify that the Bidder has successfully enrolled in E-Verify.

**City of Evansville-Vanderburgh County Standard Terms and Conditions**

1. **Acceptance.** Seller’s acknowledgment of the terms of this purchase order (this “Order”), without timely express written objection, or Seller’s shipment or performance of any part of this Order, constitutes an agreement to (i) all terms and conditions set forth or referenced herein and on the face of this Order, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to this Order (including without limitation any request for proposals or invitation for bids or Seller’s response thereto) that deal with the same

subject matter as this Order, and (iv) any other terms and conditions of a written agreement signed by Seller and the CITY or COUNTY that deals with the same subject matter as this Order (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Seller and CITY/COUNTY with respect to the purchase by CITY/COUNTY of the (i) goods ("Goods") and/or (ii) services provided or work performed ("Services") as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to CITY/COUNTY shall control. This Order constitutes an offer by CITY/COUNTY and expressly limits acceptance to the terms and conditions stated herein. No additional or supplemental provision or provisions in variance herewith that may appear in Seller's quotation, acknowledgment, and invoice or in any other communication from Seller to CITY/COUNTY shall be deemed accepted by or binding on CITY/COUNTY. CITY/COUNTY hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until CITY/COUNTY's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by CITY/COUNTY are subject to correction.

**2. Quantities.** Shipments must equal exact amounts ordered unless otherwise agreed in writing by CITY/COUNTY. The award of this Contract neither implies nor guarantees any minimum or maximum purchases.

**3. Prices.** If Seller's price or the regular market price of any of the Goods or Services covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods or Services, Seller agrees to give CITY/COUNTY the benefit of such lower price on any such Goods or Services. In no event shall Seller's price be higher than the price last quoted or last charged to CITY/COUNTY unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.

**4. Invoices:** It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates that orders are placed. Invoicing at variance with this provision will subject the Contract to cancellation. Invoices shall be sent to CITY/COUNTY's member accounts payable department.

**5. Freight on Board.** All shipments of Goods are freight on board destination unless otherwise stated in the Contract Documents. All costs for packing, delivery, drayage, postage, freight, express, or for any other purpose are to be borne by the bidder. All deliveries will be made to CITY/COUNTY properties. However, CITY/COUNTY reserves the right to alter delivery location to other facilities inside Vanderburgh County.

**6. Taxes.** Any applicable taxes shall be invoiced as a separate item. Do not include taxes in bid figures. The CITY/COUNTY and its members are exempt from state and federal taxes. An exemption certificate will be provided upon request.

**7. Payment Terms.** Payment terms are Net 45 days after receipt of correct invoice or acceptance of Goods or Services, whichever is later.

**8. Condition and Packaging.** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

**9. Delays in Shipment.** Time and date of delivery are of the essence, except when delay is due to causes beyond Seller's reasonable control and without Seller's fault or negligence.

**10. Risk of Loss.** Seller shall have the risk of loss of and damage to the Goods subject to the Contract Documents until such Goods are delivered to the destination and accepted by CITY/COUNTY or its nominee.

**11. Rejection.** All Goods and Services shall be received subject to CITY/COUNTY's inspection. Goods or Services that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Seller's expense or may be accepted at an appropriate reduction in price. CITY/COUNTY may require Seller to promptly replace or correct any rejected

Goods or Services and, if Seller fails to promptly replace or correct such Goods or Services, CITY/COUNTY may contract with a third party to replace such Goods and Services and charge Seller the additional cost.

**12. Compliance with all Laws.** Seller warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders applicable to the bidding and performance of the Contract.

**13. Warranties.** Seller warrants that all Goods and Services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by CITY/COUNTY of the Goods and Services and shall run to CITY/COUNTY and any user of the Goods or Services. This express warranty is in addition to Seller's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed, and is also in addition to any other rights available at law or equity, including but not limited to consequential and incidental damages.

**14. Indemnification.** Seller shall indemnify and hold harmless CITY/COUNTY, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of Seller's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Seller's performance or lack of performance of the terms and conditions of the Contract. In the event that any Goods or Services sold and delivered or sold and performed under the Contract Documents shall be defective in any respect whatsoever, Seller shall indemnify and save harmless CITY/COUNTY, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Goods or Services and are contributed to by said condition. In the event Seller, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of CITY/COUNTY in the performance of the Contract Documents, Seller agrees that it will indemnify and hold harmless CITY/COUNTY, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.

**15. Insurance.** Unless such insurance requirements are waived or modified by CITY/COUNTY, Seller certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to CITY/COUNTY and authorized to do business in the State of Indiana. In the absence of regulations, the amount of coverage shall be as follows:

- **Commercial General Liability** - Seller shall maintain commercial general liability insurance that shall protect Seller from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/\$1,000,000 annual aggregate.
- **Products & Completed Operations Aggregate** – Seller shall maintain a coverage limit not less than \$1,000,000
- **Personal & Advertising Injury** - Seller shall maintain a coverage limit not less than \$1,000,000
- **Fire Damage (Any one fire)** - Seller shall maintain a coverage limit not less than \$50,000
- **Medical Expense (Any one person)** - Seller shall maintain a coverage limit not less than \$5,000
- **Automobile** - Seller shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence.
- **Worker's Compensation and Employers' Liability Insurance** – If applicable to Seller, Seller shall meet the statutory requirements of the State of Indiana for worker's compensation coverage and employers' liability insurance.
- Seller shall also provide any other insurance or bonding specifically recommended in writing by the CITY/COUNTY or required by applicable law.

Satisfactory proof of coverage must be from a reliable company licensed to do business in the State of Indiana, and furnished by Seller to CITY/COUNTY before commencing any work. Such proof shall consist of certificates executed by the respective insurance companies, filed with the CITY/COUNTY and listing the City of

Evansville and Vanderburgh County as additional insured. Certificates of such insurance shall contain the provision that CITY/COUNTY be given 30 days' written notice of any intent to amend or terminate by either Seller or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.

**16. Termination for Convenience.** In addition to all of the other rights which CITY/COUNTY may have to cancel this Order, CITY/COUNTY shall have the further right, without assigning any reason therefore, to terminate any work under the Contract Documents, in whole or in part, at any time at its complete discretion by providing 30 days-notice in writing from CITY/COUNTY to Seller. If the Contract is terminated by CITY/COUNTY in accordance with this paragraph, Seller will be paid in an amount which bears the same ratio to the total compensation as does the Goods or Services actually delivered or performed to the total originally contemplated in the Contract. CITY/COUNTY will not be liable to Seller for any costs for completed Goods, Goods in process or materials acquired or contracted for, if such costs were incurred prior to the date of this Order.

**17. Termination for Default.** CITY/COUNTY may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by Seller. In addition to any other remedies available to CITY/COUNTY law or equity, CITY/COUNTY may procure upon such terms as CITY/COUNTY shall deem appropriate, Goods or Services substantially similar to those so terminated, in which case Seller shall be liable to CITY/COUNTY for any excess costs for such similar supplies or services and any expenses incurred in connection therewith.

**18. Withholding Payment:** In the event a contract is canceled under any provision herein, the CITY/COUNTY may withhold from the successful vendor any monies owed on that or any contract, an amount sufficient to compensate for damages suffered because of the violation resulting in cancellation.

**19. Contract Funding.** It is understood and agreed between Seller and CITY/COUNTY that CITY/COUNTY's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of CITY/COUNTY for any payment may arise until funds are made available to CITY/COUNTY. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. CITY/COUNTY shall not be liable to Seller for damages of any kind (general, special, consequential or exemplary) as a result of such termination.

**20. Accounting Procedures.** Seller shall comply with any accounting and fiscal management procedures prescribed by CITY/COUNTY to apply to the Contract. Seller shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds.

**21. Improper Payments.** Seller shall assume all risks attendant to any improper expenditure of funds under the Contract. Seller shall refund to CITY/COUNTY any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. Seller shall make such refunds within 30 days after CITY/COUNTY notifies Seller in writing that a payment has been determined to be improper.

**22. Contract Transfer.** Seller shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of CITY/COUNTY.

**23. Contract Personnel.** Seller agrees that it has, or will secure at its own expense, all personnel required to perform the services set forth in the Contract.

**24. Key Personnel.** Seller shall not substitute for key personnel assigned to the performance of the Contract without prior written approval from CITY/COUNTY Purchasing Agent. "Key personnel" are defined as those individuals identified by name or title in the Contract Documents or in written communication from Seller. "CITY/COUNTY Purchasing Agent" is the individual at CITY/COUNTY responsible for administering the Contract.

**25.. Contract Modifications.** The Contract may be amended only by written amendment duly executed by both CITY/COUNTY and Seller. However, minor modifications may be made by CITY/COUNTY Purchasing Agent that take advantage of unforeseen opportunities that: (a) do not change the intent of the Contract or the scope of Seller's performance; (b) do not increase Seller's total compensation or method of payment; and (c)

either improve the overall quality of the product or service to CITY/COUNTY without increasing the cost, or reduce the total cost of the product or service without reducing the quantity or quality. All such minor modifications to the Contract must be recorded in writing and signed by both the Project Coordinator and Seller, and placed on file with the Contract. No price adjustments will be made unless the procedure has been included in the Contract and a maximum allowable amount stipulated.

**26. Relationship of Parties.** Seller is an independent contractor and not an employee of CITY/COUNTY. The conduct and control of the work will lie solely with Seller. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between Seller and CITY/COUNTY. Employees of Seller shall remain subject to the exclusive control and supervision of Seller, which is solely responsible for their compensation.

**27. Advertisement.** The Contract will not be used in connection with any advertising by Seller without prior written approval by CITY/COUNTY.

**28. Nondiscrimination.** During the performance of the Contract, Seller shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, ancestry, race, ethnic background, color, religion, gender, age or disability.

**29. Equal Employment Opportunity:** The Equal Employment Opportunity Statement included herein is a condition of the bid. The successful bidder must comply with the equal employment opportunity condition in the execution of the Contract.

**30. Conflict of Interest.** Seller represents and warrants that no member of CITY/COUNTY or any of its employees or officers has a personal or financial interest or will benefit from the performance of the Contract or has any interest in any Contract, subcontract or other agreement related to the Contract. Seller shall not permit any member of CITY/COUNTY or any of its employees or officers to obtain a personal or financial interest or benefit from the performance of the Contract or to have any interest in any Contract, subcontract or other agreement related to the Contract, during the term of the Contract. Seller shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.

**31. Gratuities to CITY/COUNTY.** The right of Seller to proceed may be terminated by written notice if CITY/COUNTY determines that Seller, its agent or another representative offered or gave a gratuity to an official or employee of CITY/COUNTY in violation of policies of CITY/COUNTY.

**32. Kickbacks to Seller.** Seller shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a CITY/COUNTY Contract or in connection with a subcontract relating to a CITY/COUNTY Contract. When Seller has grounds to believe that a violation of this clause may have occurred, Seller shall promptly report to CITY/COUNTY in writing the possible violation.

**33. Monitoring and Evaluation.** Seller shall cooperate with CITY/COUNTY, or with any other person or agency as directed by CITY/COUNTY, in monitoring, inspecting, auditing or investigating activities related to the Contract. Seller shall permit CITY/COUNTY to evaluate all activities conducted under the Contract. CITY/COUNTY has the right at its sole discretion to require that Seller remove any employee of Seller from CITY/COUNTY property and from performing services under the Contract following provision of notice to Seller of the reasons for CITY/COUNTY's dissatisfaction with the services of Seller's employee.

**34. Financial Responsibility.** Seller is financially solvent and able to perform under the Contract. If requested by CITY/COUNTY, Seller agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by CITY/COUNTY's Chief Finance Officer. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, the inability of Seller to meet its debts as they become due or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then CITY/COUNTY shall be entitled, at its sole option, to cancel any unfilled part of the Contract without any liability whatsoever.

**35. Governmental Restrictions.** In the event any governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Seller to notify, in writing, the issuing purchasing office at once, indicating the

specific regulation which required such alterations. CITY/COUNTY reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

**36. Inspection at Seller's Site.** CITY/COUNTY reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to Contract award, and during the Contract term as necessary for CITY/COUNTY determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

**37. Confidentiality Information. Employee Personnel Information.** If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to employees of CITY/COUNTY's personnel records, Seller agrees to keep any such information confidential and to not disclose or permit to be disclosed, directly or indirectly, to any person or entity any such personnel information. *Other Confidential Information.* (a) Seller agrees that it will at all times hold in confidence for CITY/COUNTY all designs, know-how, techniques, devices, drawings, specifications, patterns, technical information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by CITY/COUNTY to Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection herewith or procured, developed, produced, manufactured or fabricated by Seller in connection with Seller's performance hereunder (collectively, "Information"). Seller shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. Seller shall not, without the prior written consent of CITY/COUNTY, reproduce any Information; nor disclose Information to any party; nor use any Information for any purpose other than performance for the benefit of Seller hereunder. (b) Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CITY/COUNTY in connection with the Goods or other performance covered by the Contract shall not, unless otherwise specifically agreed upon in writing by CITY/COUNTY, be deemed to be confidential or proprietary information and shall be acquired by CITY/COUNTY free from any restrictions as part of the consideration of the Contract.

**38. Intellectual Property.** Seller agrees, at its own expense, to indemnify, defend and save CITY/COUNTY harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that CITY/COUNTY's use, possession or sale of the Goods or Services infringes any copyright, patent or trademark or is a misappropriation of any trade secret.

**39. No Pre-Judgment or Post-Judgment Interest.** In the event of any action by Seller for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Seller specifically waives any claim for interest.

**40. Background Checks.** At the request of CITY/COUNTY's Project Coordinator, Seller (if an individual) or any individual employees of Seller shall submit to CITY/COUNTY criminal background check and drug testing procedures.

**41. Mediation.** If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation.

**42. No Third-Party Benefits.** The Contract shall not be considered by Seller to create any benefits on behalf of any third party. Seller shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third-party benefits.

**43. Force Majeure.** If CITY/COUNTY is unable to perform its obligations or to accept the Services or Goods because of Force Majeure (as hereinafter defined), the time for such performance by CITY/COUNTY or acceptance of Services will be equitably adjusted by allowing additional time for performance or acceptance of Services equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of CITY/COUNTY.

**44. Ownership of Documents.** All documents created pursuant to the Contract shall, unless expressly

provided otherwise in writing, be owned by CITY/COUNTY. Upon the termination or expiration of the Contract, any and all finished or unfinished documents and other materials produced by Seller pursuant to the Contract shall, at the request of CITY/COUNTY, be turned over to CITY/COUNTY. Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to CITY/COUNTY shall not, unless otherwise specifically agreed upon in writing by CITY/COUNTY, be deemed to be confidential or proprietary information and shall be acquired by CITY/COUNTY free from any restrictions as part of the consideration of the Contract.

45. **Strict Compliance.** CITY/COUNTY may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.

46. **General Provisions.** CITY/COUNTY's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action is instituted by Seller hereunder, CITY/COUNTY shall be entitled to recover costs and reasonable attorney's fees. Seller may not assign, pledge, or in any manner encumber Seller's rights under this Order, or delegate the performance of any of its obligations hereunder, without CITY/COUNTY's prior, express written consent.

47. **Contract Situs.** All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Evansville, Indiana. Indiana law will govern the interpretation and construction of the Contract.

48. **Choice of Law and Venue.** Any dispute that arises out of or relating to the terms of this Agreement shall be brought in the Superior or Circuit Court of Vanderburgh County, Indiana or in the Federal District Court for the Southern District of Indiana, Evansville Division. The law of the State of Indiana shall govern any dispute.

