



**INVITATION FOR BID (IFB)  
TRINITY LAKES STATION PARKING  
LOT CONSTRUCTION  
IFB #23-T026**

<b>IFB Release Date:</b>	<b>April 28, 2023 6:00 PM</b>
<b>Bid Due Date:</b>	<b>May 26, 2023 2:00 PM</b>
<b>REVIEW THE FULL SCHEDULE OF EVENTS IN SECTION 2</b>	
<b>DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL:</b>	<b>20%</b>
<b>DAVIS BACON WAGE DETERMINATION:</b>	<b>TX20230025</b>

**PLEASE NOTE THE CHANGE OF ADDRESS FOR TRINITY METRO INDICATED BELOW**

**Preamble:**

The Fort Worth Transportation Authority (Trinity Metro) is a regional transportation authority of the State of Texas, created pursuant to Chapter 452, Transportation Code of Texas and confirmed by a public referendum on November 8, 1983. Trinity Metro provides public transportation services within the city limits of Fort Worth, Blue Mound, Forest Hills and River Oaks. Such services include fixed bus routes, mobility impaired transportation service (ACCESS), vanpool services, ZIPZONE and commuter rail (TEX Rail and Trinity Railway Express (TRE)). A one-half of one percent (\$.0050) sales tax is dedicated to supporting Trinity Metro’s public transportation program. Trinity Metro is also the recipient of Federal Transit Administration (FTA) capital grants and Texas Commission on Environmental Quality grants.

Trinity Metro is governed by an 11-member Board of appointed officials. Eight Board members are appointed by the Fort Worth City Council and 3 Board members are appointed by the County Commissioners Court, in accordance with Subchapter N., Sec. 452.562 (c) – (f) of the Transportation Code. The Board sets policy through standing and ad hoc committees, and establishes broad business goals and policies for management. The President and Chief Executive Officer reports to the Board, and is responsible for implementation of Board policies and day-to-day operations of Trinity Metro.

This request bid implies no obligation on the part of Trinity Metro to award a contract or to pay any costs incurred in the preparation or submittal of any bid. Trinity Metro reserves the right to accept the bid that it believes most nearly meets the requirements, based on lowest most responsive and responsible bidder.

Fort Worth Transportation Authority  
801 Grove Street  
Fort Worth, Texas 76102

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## SECTION 1 MINIMUM REQUIREMENTS

NAME	FORM DESCRIPTION	FORM NUMBER	SUBMIT WITH OFFER?
Cover Page	Solicitation Number, Title, Due Date	None	<b>YES</b>
Section 1	Minimum Requirements	None	
Section 2	Schedule of Events	None	
Section 3	Instruction to Bidders	None	
Section 4	Scope of Services	None	
Section 5	Special Provisions	None	
Section 6	Federal Contract and Other Requirements	None	
Section 7	Disadvantaged Business Enterprise (DBE)	None	
Section 8	Safety and Security	None	
Section 9	Attachments and Amendments	F1	<b>YES</b>
	DBE Compliant Statement	F2	<b>YES</b>
	Schedule of DBE Utilization	F3	<b>YES</b>
	Good Faith Effort Documentation	F4	<b>YES</b>
	Good Faith Effort Information Requests	F5	<b>YES</b>
	Certification of Contractor Regarding Debarment, Suspension, and Other Responsibility Matters	F6	<b>YES</b>
	Conflict of Interest Acknowledgement and Certification	F7	<b>YES</b>
	Certification of Compliance with Restriction on Lobbying	F8	<b>YES</b>
	Buy America Compliance	F9	<b>YES</b>
	Business Questionnaire & List of References	F10	<b>YES</b>
	List of References for Similar Projects	F11	<b>YES</b>
	Affidavit of Non Collusion	F12	<b>YES</b>
	Prohibition of Contracts with Companies Boycotting Israel	F13	<b>YES</b>
	Bid Form	F14	<b>YES</b>

**NOTE: FAILURE TO SUBMIT ALL REQUESTED ITEMS ABOVE, PROPERLY COMPLETED, CAN BE CAUSE FOR REJECTION OF YOUR FIRMS' SUBMITTAL!!!**

## SECTION 2 SCHEDULE OF EVENTS

### 2.1 Schedule of Events

EVENTS	DATE	
IFB Release:	April 28, 2023	6:00 PM
Pre-Bid Meeting Trinity Metro Administrative Office 801 Grove Street Fort Worth, Texas 76102	May 9, 2023	2:00 PM
Deadline for questions: (1)	May 15, 2023	5:00 PM
Bid Submission Deadline:	May 26, 2023	2:00 PM
Bid Opening	May 26, 2023	3:00 PM
Board of Directors Meeting (2)	June 20, 2023	
Contract Executed and Notice to Proceed:	June 2023	

1. Questions should be submitted through the Bonfire portal or emailed to [contractmgmt@ridetm.org](mailto:contractmgmt@ridetm.org).  
No questions will be answered verbally.
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## SECTION 3 INSTRUCTIONS TO BIDDERS

### 3.1 IFB Advertisement

All documents related to this IFB can be downloaded from Trinity Metro's website. The link to the website is listed below.

<https://www.procuretm.org/procurements>

The documents are also available through Trinity Metro's electronic bidding portal Bonfire. The link to the electronic bidding portal is listed below.

<https://ridetm.bonfirehub.com/portal/?tab=openOpportunities>

#### **All related documents for this IFB include:**

- a. Invitation to Bid
- b. 02.2023-30-30 - Trinity Lakes Parking Lot IFB – F14-Bid Form
- c. 03.2023-3-30 - Trinity Lakes Parking Lot IFB Plans Set 1
- d. 03.2023-3-30 - Trinity Lakes Parking Lot IFB Plans Set 2
- e. 05.2023-3-30 - Trinity Lakes Parking Lot IFB Specs
- f. Geotechnical Letter Trinity Lakes Parking Lot and Bus Turnaround

### 3.2 Receipt of Bids

Receipt of hard copy sealed bids should be delivered by the date and time outlined in the Schedule of Events in Section 2. Bidders shall submit one original, one copy, and all of the required bid documents. All bid documents shall be in a sealed package, addressed as shown below, bearing the Bidder's name and address and clearly marked as follows:

Trinity Metro  
Attn: PROCUREMENT BID OPENING  
801 Grove Street  
Fort Worth, TX 76102  
IFB 23-T026 Trinity Lakes Station Parking Lot  
Construction

You can also submit your bid electronically using the Trinity Metro electronic bidding portal Bonfire by using the link below.

<https://ridetm.bonfirehub.com/portal/?tab=openOpportunities>

**All Bids, electronic or hard copy, must be submitted by the date stated in the schedule of events.** It is the sole responsibility of the Respondent to ensure timely delivery of the Bid Response. Trinity Metro will not be responsible for failure of service on the part of the U.S. Post Office, courier services,

electronic difficulties, or any other form of delivery service chosen by Respondent.

***Bids arriving late due to a delay in the delivery process will not be accepted.***

**3.3 Bid Requirements and Conditions:** Bidders should examine the entire IFB for all required documents to be included in the submitted bid package. The instructions below highlight some of the specific requirements, but are not all inclusive.

**a) Bid Form:** Bidder shall complete the Bid Form and submit with other documents identified in Section 1 – Minimum Requirements.

**b) Work Site:** The Proposer is expected to examine the site of the proposed work to be satisfied as to the character, quality and quantities of work to be performed, materials to be required and requirements of the proposed contract. The submission of the Proposal shall be prima facie evidence that the Proposer made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the proposed contract.

**c) Construction Schedule:** The Contractor shall complete work according to the milestone schedule outlined in Section 5 SP 003 Period of Performance in this document. Approximately 182 days from Notice to Proceed.

**d) Bonds:** Proposal bonds/Proposal Guarantee (see Special Provision SP007 for specific requirements), 5% of Price Proposal, shall be included with the Proposal package on the required day and time as described in SP007. Performance and payment bonds shall be submitted upon award of the contract and shall be free and clear of any encumbrances and submitted within ten days of receipt of the contract for signature.

**e) Disadvantaged Business Enterprise (DBE):** The DBE Goal for this Solicitation is 20%. Pursuant to the United States Department of Transportation's (USDOT) and the Federal Transit Administration's (FTA) Disadvantaged Business Enterprise (DBE) Program as specified in Title 49, Code of Federal Regulations, Part 26 (49 CFR Part 26), Bidder must comply with all relevant section of this Regulation and with Trinity Metro's DBE Program. Section 8 contains additional information regarding the DBE.

**Note: If Bidder is a DBE firm, then its self-performance will count towards the DBE Goal.**

**3.4 Response to Communications and Requests:** Trinity Metro will not respond to oral requests for bid questions/clarifications. Written requests should be submitted through Bonfire or will be acceptable by email identified below. Only written responses, from Trinity Metro, provided as addenda shall be official, and all other forms of communication with any officer, employee, or agent of Trinity Metro shall not be binding on Trinity Metro. Any responses to such written requests shall be provided by Trinity Metro in the form of an addendum.

Trinity Metro  
Attn: Pat Malone  
801 Grove Street  
Fort Worth, Texas 76102  
Email: [contractmgmt@ridetm.org](mailto:contractmgmt@ridetm.org)

***Bidders shall not contact members of Trinity Metro or Trinity Metro's Board of Directors concerning this IFB. Any bidders violating this provision may be disqualified from consideration in this IFB.***

**By submission of a bid, proposal, offer, or quotation in response to this solicitation, the bidder agrees to submission of any dispute under this solicitation (or resulting contract) to procedures for protests and dispute resolution pursuant to Article 8 of Trinity Metro's Procurement Policy.**

**3.5 Basis for Contract Negotiation:** This IFB and resulting bid shall be used as the basis for any potential contract negotiation.

**3.6 Exceptions to Any Portion of the Solicitation Requirements**

**a. Exceptions to IFB terms and conditions - Proposers are cautioned to limit exceptions, conditions, and limitations to the proposal documents as they may be determined to be so fundamental as to cause rejection of the proposal for not responding to the requirements of the IFB.**

**b. Exceptions taken to the terms and conditions of the solicitation, to any of its formal attachments or to other parts of the solicitation shall be clearly identified. Each exception shall be specifically related to each paragraph and/or specific part of the solicitation to which the exception is taken. Proposer shall provide rationale in support of the exception and fully explain its impact, if any, on the performance**

**3.7 Rejection of Bids:** Trinity Metro reserves the right to reject any or all bids. Issuance of this IFB does not bind Trinity Metro to award a contract, nor does Trinity Metro in any way assume liability for expense incurred by bidder in preparation of its bid.

**3.8 Requests for Clarification:** All requests for clarifications or changes shall be submitted in accordance with the Schedule of Events outlined in Section 2.

**3.9 Addenda and Attachments to IFB:** This Invitation for Bids (IFB) has been posted to the Trinity Metro Bonfire Portal as well as on the Trinity Metro's website for your convenience. Any attachments, addendums, clarifications or further instructions to bidders, whether as a result of questions raised by bidders or initiated by Trinity Metro, if issued, will also be posted. It is the Bidder's responsibility to ensure that the entire IFB package, in its latest version, is reviewed prior to submittal of a bid.

**3.10 Award Criteria:** The lowest responsive and responsible bidder whose bid is most advantageous to the Trinity Metro shall be selected to perform the services. A responsible bidder shall be able to perform all the services required in this IFB.

**3.11 Contract Award:** Trinity Metro reserves the right, as the interests of the Authority may require, to postpone, accept, or reject any and/or all bids, and to award the contract(s) to the lowest responsive and responsible bidder.

In awarding a contract(s), Trinity Metro reserves the right to consider all elements entering into the determination of the responsibility of the bidder. Any bid which is incomplete, conditional, obscure, or which contains additions not called for or irregularities of any kind, may be cause for rejection of the bid.

In the event a single bid is received, Trinity Metro will conduct a price and/or cost analysis of the bid. A price analysis is the process of examining and evaluating a price submitted without examining in detail the separate cost elements and the profit included in the bid. It should be recognized that a price analysis through comparison to other similar procurements shall be based upon an established or competitive price of the elements used in the comparison. The comparison shall be made to a purchase of similar quantity and involving similar specifications. Where a difference exists, a detailed analysis shall be made of this difference and costs associated thereto. Trinity Metro has the right to enter into a negotiated procurement should only a single bid be received.

Where it is impossible to obtain a valid price analysis, it may be necessary for Trinity Metro to conduct a cost analysis of the bid price.

This solicitation may result in the award of more than one contract.

**3.12 Proprietary Information:** If a bid includes proprietary data or information that the bidder does not want disclosed to the public, such data or information shall be specifically identified as such on every page on which it is found. Data or information so identified will be used by Trinity Metro solely for the purpose of evaluating bids and conducting contract negotiations. Disclosure of any proprietary information by Trinity Metro shall be in strict accordance with the laws and regulations regarding disclosure in the State of Texas.

**3.13 Cost of Bid Preparation:** The cost of preparing a response to this IFB, including site visits, will not be reimbursed by Trinity Metro.

**3.14 Disclosure of Interested Parties:** Section 2252.908 of the Texas Government Code states that Texas state agencies and other Texas governmental entities, such as the Trinity Metro, may not enter into certain contracts with a business entity unless the entity submits a "disclosure of interested parties" (Form 1295). The successful bidder must submit a completed, executed, and notarized Form 1295, with the certification of filing with the Texas Ethics Commission, when a contract is delivered to Trinity Metro for execution. Please refer to the information at the Texas Ethics Commission's website for

instructions on registering and completing Form 1295. Trinity Metro must notify the Texas Ethics Commission of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the contract binds all parties to the contract. The commission will post the completed Form 1295 to its website within seven business days after receiving notice from Trinity Metro. Trinity Metro will not execute the contract, and no agreement will be formed if Trinity Metro has not received the certification of filing.

### **3.15 Prohibition of Contracts with Companies Boycotting Israel:**

The Texas Government Code, Chapter 2271, creates a Prohibition of Contracts with Companies Boycotting Israel.

Effective September 1, 2019, a governmental entity (which includes a transportation authority) may not enter a contract for goods or services valued at \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity with a company with 10 or more full-time employees unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract.

“Boycott Israel” is defined to mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

“Company” is defined to mean a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. See Form F-13 attached.

**3.16 Davis-Bacon:** For construction projects costing over \$2,000; Davis-Bacon Wages Rate apply and Davis Bacon Certified Payroll must be submitted weekly. The current wage determination rates for this project are attached as Exhibit “A “. The recommended fillable Davis Bacon form WH347 for reporting purposes is also attached. Instructions for completing payroll WH347 and the fillable Davis Bacon WH347 payment form maybe found at: <https://www.dol.gov/agencies/whd/forms/wh347>

**3.17 FORCE MAJEURE:** Definition of Force Majeure: Acts of God; earthquake, unusually severe weather, flood and any other natural disaster; civil disturbance, strikes and labor disputes; fires and explosions; war and other hostilities; embargo; or failure of third parties, including Suppliers or Subcontractors, to perform their obligations to the Contractor due to a force majeure event described above.

Economic hardship, changes in market conditions, general supply chain issues, or insufficiency of funds do not constitute an Event of Force Majeure, and an Event of Force Majeure does not excuse an obligation to make a payment required under this Contract. Failure of third parties, including

Suppliers or Subcontractors, to perform their obligations to the Contractor, due to any reason other than a force majeure event described above, shall not constitute an Event of Force Majeure.

If Contractor cannot perform some of its obligations due to an Event of Force Majeure, it must nevertheless continuously and diligently carry out and complete all of its obligations not prevented by the Event of Force Majeure.

Notice of Delay. If Contractor is delayed in the performance of the Services due to an Event of Force Majeure or otherwise, Contractor must in a prompt manner upon receiving knowledge of such delay give written notice thereof to Trinity Metro and furnish Trinity Metro information concerning the cause of the delay and its approximate anticipated length and demonstrating, if applicable, that the delay is due to an Event of Force Majeure. Contractor's failure to provide such prompt written notice waives Contractor's right to invoke Force Majeure. For purposes of this paragraph, "prompt notice" shall mean as soon as reasonably practical but in no event more than thirty (30) days after the occurrence of the Event of Force Majeure.

Sole Relief. If an Event of Force Majeure occurs, provided Contractor has complied with all applicable notice requirements regarding a request for relief under this section, Contractor is excused from performance of its obligations under this Contract, but only for the time and to the extent that such performance is actually prevented by the Event of Force Majeure. When Contractor is able to resume performance of its obligations, it shall immediately give Trinity Metro written notice to that effect and promptly resume performance under this Contract. The relief offered by this Force Majeure provision is the exclusive remedy available to Contractor with respect to an Event of Force Majeure, and no claim for damages shall be made by the Contractor for delays resulting from an Event of Force Majeure.

Continuing Delays. Trinity Metro may terminate this Contract if:

Contractor's failure to perform under this Contract due to an Event of Force Majeure impairs the material benefits of this Contract to Trinity Metro; and

Contractor does not resume performance in accordance with this Contract within ten (10) business days following Trinity Metro's giving notice to Contractor of Trinity Metro's intent to terminate this Contract.

## SECTION 4 SCOPE OF SERVICES

### 1.0 Introduction/Background

The Fort Worth Transportation Authority dba Trinity Metro, one of the largest and most dynamic public transit systems in the state of Texas, providing service throughout Tarrant County Texas is soliciting bids from qualified contractors to provide construction of the Trinity Railway Express (TRE) Trinity Lakes Station Parking Lots.

The scope of work will consist of construction and related services as described in this Invitation for Bids (IFB #23-T026).

In 2016, the City of Richland Hills withdrew its membership from Trinity Metro. TRE Richland Hills Station will be closed and a new station, located 0.9 miles east of the existing station, will be constructed within the City of Fort Worth limits. Trinity Lakes transit-oriented development, a 1,600-acre master planned community, will be constructed around the new station, including an access road and utilities from Trinity Boulevard.

Trinity Metro is responsible for construction of the new Trinity Lakes Station double side platform passenger station, including track realignment, new siding, turnouts, signal, and communication modifications. The station and track work is under contract and in progress. Trinity Metro is also responsible for constructing 2 new parking lots consisting of 500 spaces including subgrade preparation, concrete paving, inlet and storm sewer installation, landscaping and irrigation, lighting, security camera installation.

### 3.0 Description/Scope of Work

Construction of the Trinity Lakes Station Parking Lots shall include but not be limited to:

#### **3.1 Site work Construction**

- SW3P and Site Preparation
- Clearing and Grubbing
- Subgrade preparation
- Concrete paving (parking lots, sidewalks, and ramps)
- Storm Sewer
- Lighting
- CCTV Cameras
- Electrical and Communication Utilities
- Pavement Markings & Signage
- Irrigation
- Landscaping

#### 4.0 Schedule

The contractor shall complete work according to the milestone schedule outlined in Section 5 SP003 Period of Performance in this document. Approximately 155 days from Notice to Proceed.

#### 5.0 Special Requirements

##### Construction Permits

The Contractor shall be responsible for obtaining all construction permits.



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SP 010	Competition in Subcontracting
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SP 015	Water for Construction
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**SP 000 Selection Procedure**

- a. Bids received after date and time specified in Section 2.0 are not eligible and shall not be considered for award of contract.
- b. Award of contract shall be made to the lowest responsive, responsible Bidder whose Bid Documentation is compliant with the IFB requirements. Notwithstanding any other provision of this IFB, Trinity Metro Board of Directors expressly reserves the right to:
  - Waive any immaterial defect or informality, or
  - Reject any or all Proposal Documentations, or
  - Reissue a Request for Proposal Documentation, or
  - Cancel the Request for Proposal.

**SP 001 Contract Type**

This is a firm fixed price Contract. Contractor shall perform and complete the Work in accordance with the terms and conditions and for the price stipulated in the Contract.

**SP 002 Definitions**

Capitalized terms in these Special Provisions shall have the meanings as they are defined in the General Provisions.

**SP 003 Period of Performance**

All work required under this Contract shall be completed on or before the milestones set forth below and shall be incorporated into the Construction Schedule and monthly schedule updates. There is one contract milestone and it must be achieved by the respective milestone date.

**1. Milestone A - Completion and Final Acceptance of All Work by the Authority (155 after NTP)**

The Contractor shall complete all Work and achieve Authority acceptance of the Work on or before the associated finish date shown below. Completion means completed all Work, turned over to the Authority and accepted by the Authority. Completion includes, but is not limited to, all physical work complete; no non-conforming work, deficiencies, failed tests, submittals or other requirements outstanding; cleaned up and with all Contractor equipment and materials removed; all inspections and testing successfully complete and submitted to the Authority; certificates of occupancy received; As-Built submission and approval by the Authority, and in all ways ready for Authority use in the manner and to the standards the Authority intended in accordance with all contract requirements.

**SP 004 Liquidated Damages**

Contractor shall pay to Trinity Metro the sums set forth below for each calendar day of delay in completion of the Work within the time established in the contract. Any liquidated damages assessed shall be cumulative. These Liquidated Damages are a reasonable estimate of potential damages to Trinity Metro which are uncertain at this time and could be uncertain at the time such damages would be incurred. Should the amount of liquidated damages exceed the amount owed to Contractor on the Contract, Contractor is required to pay those excess liquidated damages to Trinity Metro.

Liquidated damages shall be assessed in the amount of \$1,400.00 for each calendar day of delay for Contractor's failure to achieve Milestone A.

**SP 005 Coordination with Other Contracts**

In accordance with the General Provisions, Contractor has an express obligation and duty to coordinate its work with the work of other contractors if applicable.

Contractor shall not impede, hinder or delay Trinity Metro or any other contractor in performance of its work. It is Contractor's duty under this Contract to communicate with any contractor who will be performing work, which may connect, complement, interfere with or in any manner impact Contractor's Work and to resolve any disputes or coordination problems directly with such contractor(s).

**5.1 Private (Franchise) Utility Coordination**

Contractor shall schedule and coordinate the Work with private utilities and their contractors working in the area during the Project construction period. Information about what private utility contractors are scheduled to be performing work in the project area can be obtained from the relevant utility company.

Contractor is responsible for notifying utility companies, in writing, a minimum of thirty (30) calendar days prior to commencing any work effort affecting the utility unless the utility company's policies require earlier notification. Contractor shall reconfirm with the utility company by telephone forty-eight (48) hours prior to beginning Work or in accordance with the utility company's notice provisions.

**5.2 Municipal Utility Coordination**

Contractor shall schedule and coordinate the Work with municipal utilities and the municipality's contractors. Trinity Metro is willing to help in the coordination with the municipality but any assistance provided does not relieve Contractor of its obligation to coordinate and schedule its Work with the affected utility.

Contractor is responsible for notifying utility companies, in writing, a minimum of thirty (30) calendar days prior to commencing any work effort affecting the utility unless the utility company's policies require earlier notification. Contractor shall reconfirm with the utility company by telephone forty-eight (48) hours prior to beginning Work or in accordance with the utility company's notice provisions.

**SP 006 Binding Contract Criteria**

The criteria specified in the Invitation to Bid (IFB) are binding Contract criteria. If, after award, a conflict is discovered between the IFB requirements and Contractor's Proposal, the IFB criteria shall govern. The only exception to the previous sentence would be if there is a written and signed agreement between Contractor and Trinity Metro waiving a specific requirement.

**SP 007 Proposal Bond/Guarantee**

No Proposals will be considered unless they are accompanied by a Proposal guarantee reasonably acceptable to Trinity Metro in the form of a Proposal bond from a surety reasonably acceptable to Trinity Metro and the U.S. Government, cashier's or certified check payable to Trinity Metro, in the amount of five percent (5%) of the Proposal amount ("Proposal Guarantee"). Failure to include the required Proposal Guarantee in the Proposal may be cause for rejection of the Proposal. The entire Penal Sum, as defined in the Proposal Guarantee, shall be paid to **Fort Worth Transportation Authority** as fixed and liquidated damages if the Contract is awarded to Contractor and Contractor fails promptly and properly to execute the Contract and to provide any required bonds within the 30 days following the receipt of draft contract. If the Proposal Guarantee is a surety bond, then it must be held in place for 120 calendar days from the date Contractor's Proposal is opened.

**Performance Bond (100%) and Payment Bond (100%) will be required upon contract execution.**

**SP 008 Exchange of Information**

Exchanging information between Trinity Metro and Contractor is necessary throughout the construction process to improve the understanding of TRINITY METRO's requirements and industry capabilities to assist Contractor in satisfying the Contract requirements and to promote reasonable pricing and increase Project efficiency. Trinity Metro and Contractor agree to meet on regular intervals to promote the exchange of information to further these goals.

**SP 009 Goals for Disadvantaged Business Enterprises**

Contractor shall be required to demonstrate a commitment to disadvantaged business enterprises participation in the Project. **DBE Goal for this Solicitation is: 20%**. Contractor will be required to use its best efforts, in good faith and on a reasonable basis, to achieve and to maintain the goal throughout the construction of the Project.

**SP 010 Competition in Subcontracting**

Contractor shall select Subcontractors and Suppliers on a competitive basis to the maximum extent practicable, consistent with the objectives and requirements of the Contract.

**SP 011 Performance of Work by Contractor**

Unless such a description has been submitted with this Proposal, the successful Proposer must furnish the Contract Administrator, within 5 days after award, a description of the work which it intends to perform with its own organization (e.g., earthwork, paving, drainage, lighting, or

utilities), the percentage of the total work this represents, and the estimated cost thereof.

**SP 012 General Wage Determinations (Davis-Bacon Act)**

- 12.1 Contractor and all Subcontractors are obligated to pay their employees minimum wages as identified for federally assisted construction projects pursuant to the prevailing wage provisions of the Davis-Bacon Act, as amended. "General Decision Number TX20230025," outlines the minimum wages and fringe benefits to be paid to trades and craftsmen employed by Contractor and all Subcontractors, while performing Work on the Work Site. Contractor and all Subcontractors shall not withhold from, or require any employee to return any portion of the prevailing wages and fringe benefits paid for Work performed at or on the Work Site, except for federal, state, and local taxes and FICA taxes. (This does not preclude voluntary employee withholding for pension plans, retirement plans, savings plans, 401(K) plans, etc. Such voluntary plan deductions will also be subject to audits by Trinity Metro to determine that they are bona fide deductions and not returns to Contractor or its Subcontractors).
- 12.2 Contractor and its Subcontractors shall pay all mechanics and laborers employed or working upon the Work Site, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, General Decision Number TX20230025, which is made a part hereof, regardless of any contractual relationship which may be alleged to exist between Contractor or Subcontractor and the laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination, General Decision Number TX20230025, for the classification of Work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing Work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which Work is performed. The wage determination (including any additional classification and wage rates conformed under

paragraph 12.2.1)) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the Work in a prominent and accessible place where it can be easily seen by the workers.

- 12.3 Trinity Metro requires that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, General Decision Number TX20230025, and which is to be employed under the Contract shall be classified in conformance with the wage determination, General Decision Number TX20230025. Trinity Metro shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
1. The Work to be performed by the classification requested is not performed by a classification in the wage determination; and
  2. The classification is utilized in the area by the construction industry; and
  3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- 12.4 If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and Trinity Metro agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by Trinity Metro to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.
- 12.5 In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and Trinity Metro do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), Trinity Metro shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

- 12.6 The wage rate (including fringe benefits where appropriate) shall be paid to all workers performing Work in the classification under this Contract from the first day on which Work is performed in the classification.
- 12.7 Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination, General Decision Number TX20230025, or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 12.8 If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis–Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.
- 12.9 The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor on the Work the difference between the rates of wages required by the Contract to be paid laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor on the Work and the rates of wages received by the laborers and mechanics and not refunded to Contractor or Subcontractors or their agents) the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the Work Site all or part of the wages required by the Contract, the FTA may, after written notice to the Contractor take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- 12.10 Contractor and all Subcontractors shall keep an accurate payroll record during the course of the Work, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week by each employee, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of

the Davis-Bacon Act), deductions made and actual wages paid. Contractor is required to preserve these payroll records for a period of three years thereafter for all laborers and mechanics working at the Work Site. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- 12.11 These payroll records shall be certified weekly and submitted to Trinity Metro by close of business on Wednesday of the following week. Contractor and all Subcontractors shall forfeit, as a penalty to the Trinity Metro, \$50 for each calendar day or portion thereof, for each employee employed in the execution of the Work that is paid less than the prevailing wage and fringe benefits rate per “General Decision Number TX20230025” for such work or craft in which said employee is employed in the execution of the Work at the Work Site. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee’s social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/forms/wh347> or its successor site. The Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the FTA if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the FTA, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Contractor to



require a Subcontractor to provide addresses and social security numbers to the Contractor for its own records, without weekly submission to Trinity Metro.

- 12.12 Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
1. That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
  2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
    - a. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed, as specified in the applicable wage determination incorporated into the contract.
    - b. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance".
    - c. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- 12.13 Contractor or Subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the FTA may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- 12.14 Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the Work Site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where the Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- 12.15 Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval,

evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the Work Site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the Work Site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

- 12.16 Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- 12.17 The Contractor shall comply with the requirements of 29 CFR part 3 (the Copeland Act), which are incorporated by reference in this Contract. The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any Subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- 12.18 A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12. If Trinity Metro finds that any laborer or mechanic employed by Contractor or

any Subcontractor directly on the Work Site covered by the Contract has been or is being paid a rate of wages less than the rate of wages required by the Contract to be paid, the federal government by written notice to Contractor may terminate Contractor's right to proceed with the Work or the part of the Work as to which there has been a failure to pay the required wages. The government may have the work completed, by contract or otherwise, and Contractor and Contractor's sureties shall be liable to the government for any excess costs the government incurs.

- 12.19 Trinity Metro will not recognize any claim for additional compensation because of the payment by Contractor or any Subcontractor of any wage rate in excess of the prevailing wage rate set forth in "General Decision Number TX20230025." The possibility of wage increase is one of the elements to be considered by Contractor and all Subcontractors in determining the Proposal. Contractor and its Subcontractors shall not be eligible for reimbursement or additional increases in the Contract Proposal Price for subsequent increases in wages and/or fringes benefits made after the date of Proposal Opening.
- 12.20 Contractor will be required to comply with Title VI and VII of the 1964 Civil Rights Act, (as amended), with Executive Order No. 11246, and with all other regulations applicable to equal employment and nondiscrimination.
- 12.21 In accordance with the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 - 3708, Contractor agrees and assures that, for the Project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Contractor agrees that determinations pertaining to these requirements will be made in accordance with applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Commotion (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.
- 12.22 All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- 12.23 Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR

parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

12.24 By entering into this Contract, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

12.25 No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

12.26 The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**SP 013 Staging Plan and Clean Up**

**13.1 Staging/Storage Areas**

Contractor is not required to utilize any sites identified by Trinity Metro for staging or storage and may propose alternative locations for approval by Trinity Metro. Any location used by Contractor for staging or storage shall have the site and natural drainage pattern restored to their original condition upon completion of the Project at no additional cost to Trinity Metro.

**13.2 Cleaning Up**

Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the Work, Contractor shall remove from the Work site or premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Trinity Metro. Upon completing the Work, Contractor shall leave the Work Site in a clean, neat and orderly condition satisfactory to Trinity Metro.

**SP 014 Existing Material**

The disposition of all existing Material shall become the responsibility of Contractor and shall coordinate disposition with Trinity Metro. All salvage materials shall be credited to Trinity Metro.

**SP 015 Utilities for Construction**

Contractor is responsible for any utilities, including water, needed for the Project.

**SP 016 Safety**

Contractor shall comply with Trinity Metro's Construction Safety Polices as described in this IFB.

**SP 017 Safety Restrictions - Work Near High Voltage Lines**

The following procedures will be followed:

A warning sign not less than five inches by seven inches, painted yellow with black letters that are legible at twelve feet shall be placed inside and outside vehicles such as cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment, or similar apparatus. The warning sign shall read as follows:

“WARNING - UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN SIX FEET OF HIGH VOLTAGE LINES.”

1. Equipment that may be operated within ten feet of high voltage lines shall have an insulating cage-type guard about the boom or arm, except back hoes or dippers, and insulator links on the lift hook connections.
2. When necessary to work within six feet of high voltage electric lines, notification shall be given the power company (Oncor) who will erect temporary mechanical barriers, de-energize the lines, or raise or lower the line. The work done by the power company shall be at Contractor’s sole cost and expense. The notifying entity shall maintain an accurate log of all such calls to Oncor and shall record action taken in each case.
3. Contractor is required to make arrangements with the Oncor for the temporary relocation or raising of high voltage lines and will be at the Contractor’s sole cost and expense.
4. No person shall work within six feet of a high voltage line without protection having been taken as outlined in this IFB.

**SP 018 Traffic Control**

Contractor shall be responsible for providing traffic control during the construction of this project consistent with the provision set forth in the 2011 Texas Manual on Uniform Traffic Control Devices Revision 2, or the latest revision of same, in accordance with Proposal plans indicating traffic control requirements of each location.

**SP 019 Detours**

Contractor shall prosecute his work in such a manner as to create a minimum of interruption to traffic and pedestrian facilities and to the flow of vehicular and pedestrian traffic within the Project area.

**SP 020 Barricades and Warning Signs**

Barricades, warning, and detour signs shall conform to the Standard Specifications “Barriers and Warning and/or Detour Signs,” as set forth in the 2011 Texas Manual on Uniform Traffic Control Devices Revision 2, or the latest revision of same.

**SP 021 Rights of Way, Easements and Premises**

Contractor shall confine construction activities within rights of way and construction limits as shown in the construction documents unless other arrangements are made with owner(s) of adjacent private property. If additional space or property is needed to accommodate Contractor's method of construction or for the convenience of Contractor, Contractor shall bear all related costs and responsibilities. Prior to negotiating for the use of any private property outside the specified construction limits, Contractor shall notify Trinity Metro of its intention. Prior to the use of any private property outside the specified construction limits, Contractor shall provide Trinity Metro a copy of written permission from the property owner(s). Contractor shall provide Trinity Metro a copy of the property owner(s) release when construction activities have been completed.

**SP 022 Zoning Requirements**

During the construction of the Project, Contractor shall comply with zoning requirements of the appropriate city/county in the use of vacant property for storage purposes.

**SP 023 Evaluation of Bids**

Any Bid may be rejected if Trinity Metro determines that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the Proposal, but the prices for individual items as well. All firms submitting a bid must also be determined that they are responsive and responsible.

**SP 024 Indemnification**

**SP 24.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS TRINITY METRO AND THE BOARD, AND ALL OF THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, MANAGERS, REPRESENTATIVES, ASSIGNEES AND AFFILIATES, OF FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIABILITY(IES) OR EXPENSE(S) (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR CONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF CONTRACTOR, BUT ONLY TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE (INCLUDING BUT NOT LIMITED TO CONTRACTOR'S CONSULTANTS, SUBCONTRACTORS, SUB-SUBCONTRACTORS AND SUPPLIERS).**

**SP 24.2 NOTWITHSTANDING THE FOREGOING SECTION SP 25.1, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS TRINITY METRO AND THE BOARD, AND ALL OF THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, MANAGERS, REPRESENTATIVES, ASSIGNEES AND AFFILIATES FROM AND AGAINST ANY AND ALL CLAIMS FOR THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF AN EMPLOYEE OF CONTRACTOR, ITS AGENT OR ITS SUBCONTRACTOR OF ANY TIER, WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED, OR IS**

**ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF TRINITY METRO AND CONTRACTOR THAT IN SUCH EVENT THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. CONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

**SP 24.3 THE INDEMNIFICATION OBLIGATIONS HEREIN SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR, ANY SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, UNDER WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.**

**SP 24.4 CONTRACTOR SHALL DEFEND AND INDEMNIFY TRINITY METRO AND THE BOARD, AND THEIR RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY SUITS OR OTHER PROCEEDINGS ARISING FROM OR RELATED TO INTELLECTUAL PROPERTY INFRINGEMENT, OR CONTRACTOR'S FAILURE TO PAY ANY SUBCONSULTANT, SUBCONTRACTOR, OR SUPPLIER, IN CONNECTION WITH THIS CONTRACT, EXCEPT TO THE EXTENT THE CLAIM IS BASED ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY TRINITY METRO OR THE BOARD, OR ANY ONE OF THEIR RESPECTIVE AGENTS, EMPLOYEES, OR OTHER ENTITIES (EXCLUDING THE CONTRACTOR AND ITS AGENTS, EMPLOYEES OR SUBCONSULTANTS) OVER WHICH TRINITY METRO OR THE BOARD EXERCISES CONTROL.**

**SP 24.5 CONTRACTOR SHALL CAUSE ALL CONTRACTS FOR SUBCONTRACTED SERVICES TO INCLUDE LIKE INDEMNITY PROVISIONS THAT SHALL COVER BOTH TRINITY METRO AND CONTRACTOR. NOTHING HEREIN SHALL LIMIT THE INSURANCE REQUIREMENTS OR APPLICABILITY OF SAME SET FORTH IN THIS AGREEMENT AND THE CONTRACT DOCUMENTS. THE INDEMNIFICATION OBLIGATIONS SET FORTH HEREIN SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

**SP 24.6 IF ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AFFECT THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION OBLIGATIONS UNDER THIS ARTICLE, SUCH LEGAL LIMITATIONS ARE MADE A PART OF THE INDEMNIFICATION OBLIGATION TO THE MINIMUM EXTENT NECESSARY TO BRING THE INDEMNIFICATION INTO CONFORMITY WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND AS SO MODIFIED THE INDEMNIFICATION OBLIGATIONS SHALL CONTINUE IN FULL FORCE AND EFFECT.**

**SP 24.7 TRINITY METRO HAS THE RIGHT TO APPOINT DEFENSE COUNSEL, AT ITS OWN EXPENSE, TO ASSOCIATE IN THE DEFENSE OF ANY CONTESTED CLAIM. TRINITY METRO'S ELECTION TO APPOINT DEFENSE COUNSEL WILL NOT AFFECT CONTRACTOR'S OBLIGATION TO INDEMNIFY AND HOLD HARMLESS TRINITY METRO FROM AND AGAINST ALL CLAIMS TO THE EXTENT SET FORTH IN THE CONTRACT. WHEN CONTRACTOR PROVIDES A DEFENSE FOR TRINITY METRO, CONTRACTOR WILL RETAIN COUNSEL EXPERIENCED IN DEFENDING SUCH CLAIMS AND MUTUALLY AGREEABLE TO BOTH TRINITY METRO AND CONTRACTOR. TRINITY METRO WILL NOT UNREASONABLY WITHHOLD, CONDITION, OR DELAY ITS CONSENT TO CONTRACTOR'S CHOICE OF COUNSEL. CONTRACTOR WILL NOT SETTLE ANY CLAIMS IN A**



**MANNER THAT WOULD IMPOSE ANY EXPENSE, PENALTY, OBLIGATION, OR LIMITATION ON TRINITY METRO WITHOUT TRINITY METRO'S PRIOR WRITTEN CONSENT.**

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**101** Terms and Definitions**TERMS****DEFINITIONS**

**Construction Schedule** The schedule prepared by Contractor and accepted by Trinity Metro setting forth the logical sequence of activities required for Contractor's orderly performance and completion of the Work in accordance with the Contract and specifically to meet the specified milestone dates.

**Consultant** Any person, firm, partnership, corporation or other entity, or combination thereof under contract to Trinity Metro and performing design related services, including but not limited to, engineering, geotechnical investigations, design, project control, construction management, contract administration, surveying, and environmental assessment in support of the overall Project of which the Contract is a part.

**Contract** The written agreement covering the performance of the Work and the furnishing of labor, Materials, tools and equipment in the design, supervision and construction of the Work. The Contract shall include the Invitation for Bid, Bid, General and Special Provisions, plans and specifications and contract bonds; also any and all modifications amending or extending the Work contemplated and which may be required to complete the Work in a substantial and acceptable manner.

**Contract Price** The total amount payable by Trinity Metro to Contractor, including authorized adjustments, for the performance of the Work under the Contract.

**Contractor** The individual, firm, partnership, corporation, or other entity or combination thereof entering into the Contract with Trinity Metro and primarily liable for acceptable performance of the Work, as well as performing services, including but not limited to engineering, geotechnical investigations, design, project control, construction management, contract administration, surveying, and environmental assessment in support of the overall Project of which the Contract is a part.

**Days** Unless otherwise designated, "days" as used in the specifications will be understood to mean calendar days. In computing any period of time established under the Contract, the day of the event from which the designated period of time begins to run shall not be included.

**Extra Work** Work that is not reasonably within the scope of the Contract documents and not otherwise incidental or necessary to performance of the

Contract. The term does not include any change by Contractor in the means and methods for performing the work from that anticipated or Bid, whether or not the change is due to foreseeable or unforeseeable events or conditions, if the intended result or scope of the Work is not expanded or increased. Trinity Metro shall not be liable for any claim due to a change in the means or methods of construction by Contractor, resulting in additional costs, if Trinity Metro has not changed the plans and specifications and if the intended result and scope of the work required by and reasonably inferred from the Contract documents remains the same. Trinity Metro shall also not be liable for any claim for work required in performance of the Contract, without which the Contract could not be performed in accordance with its terms, notwithstanding that Contractor did not contemplate or foresee the degree or amount of work that would be necessary or required to complete the Contract and notwithstanding that it cost Contractor more to complete the Contract work than originally contemplated.

<b>Final Acceptance</b>	Written notice by Trinity Metro acknowledging that Contractor has fulfilled all of its obligations under the Contract and that Trinity Metro has accepted the Work as of the date stated in the Notice. Final Acceptance is a condition precedent to Final Payment and defines commencement of the warranty period.
<b>Final Completion</b>	The fulfillment of all of Contractor's obligations under the Contract.
<b>FTA</b>	Federal Transit Administration.
<b>Legal Holidays</b>	The following days on which Contractor is not allowed to work: January 1 <sup>st</sup> , the last Monday in May, July 4 <sup>th</sup> , the first Monday in September, the fourth Thursday in November and December 25 <sup>th</sup> .
<b>Materials</b>	Any substance such as building and construction materials, equipment, products, and articles incorporated or to be incorporated into the Work.
<b>Modification</b>	A written document signed by Trinity Metro, including a Change Order, issued to Contractor which alters the scope of the Work to be performed by Contractor, changes the schedule for performance of the Work, increases or decreases Contractor's compensation, or makes any other change to the Contract.
<b>Other Contractor</b>	A contractor other than Contractor, as defined herein, performing work or services on the Project.
<b>Plans</b>	The drawings, standard drawings, profiles, typical cross-sections, general cross-sections, elevations, diagrams, schedules, and details, which show

the locations, character, dimensions, and details of the Work.

<b>Project</b>	TRINITY METRO's overall objective or endeavor of which the Contract forms a part.
<b>Product Data</b>	Written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, or other information furnished by Contractor to describe building or construction Materials to be used for some portion of the Work.
<b>Project Closeout</b>	The process by which Contractor documents fulfillment of all obligations under the Contract. This process follows Substantial Completion and precedes Final Acceptance.
<b>Project Manager</b>	Contractor's designated representative who is present on-site, authorized to receive and fulfill instructions from Trinity Metro, and who directs the Work.
<b>Punch List</b>	A list or lists of items to be furnished and/or work to be performed by Contractor to finally complete the Work.
<b>Purchaser</b>	Fort Worth Transportation Authority (dba Trinity Metro)
<b>Recipient</b>	Fort Worth Transportation Authority (dba Trinity Metro)
<b>Samples</b>	Physical examples of building and construction Materials to be supplied, or workmanship which, when approved by Trinity Metro, shall establish standards by which the Work shall be judged.
<b>Shop Drawings</b>	Drawings, diagrams, schedules, or other data prepared by Contractor or any Subcontractor, manufacturer, Supplier, or distributor to illustrate or detail some portion of the Work.
<b>Scope of Work</b>	That part of the Contract containing written directions and requirements for completing the Work. Standards, or portions thereof, cited in the Specifications by reference shall have the same effect as if physically included in the Contract in their entirety.
<b>Subcontractor</b>	Any person, firm, partnership, corporation, or other entity, other than employees of Contractor, who contracts with Contractor or another such party to furnish labor, or labor and Materials, under the Contract.
<b>Substantial Completion</b>	Completion of the Work to the state where such Work can be used for the purpose and in the manner for which it was intended, without harm or risk of harm to such Work, or any other Work, or to any person or other

property, all as certified by Trinity Metro in accordance with the terms hereof. To achieve Substantial Completion all testing must be complete and the Work must be operating properly.

<b>Supplier</b>	Any person, firm, partnership, corporation or other entity that provides Materials, including those fabricated to a special design, but usually provides no labor at the Work Site other than delivery.
<b>Trinity Metro</b>	The Fort Worth Transportation Authority.
<b>Work</b>	The furnishing of all of the supervision, labor, Material, equipment, services, geotechnical investigations, project control, construction management, contract administration, surveying, environmental assessment and incidentals necessary to complete any individual item and the entire Contract and the carrying out of any duties and obligations imposed on Contractor by the Contract, including completing such activities in compliance with the Plans and Specifications.
<b>Work Site</b>	The area enclosed by the limit of Work indicated on the Plans and the boundaries of local streets and public easements in which Contractor is to perform under the Contract.
<b>Working Drawings</b>	The drawings prepared by Contractor which depict the sequence, methods, Material, details of construction or procedures for accomplishing a portion of the Work, including, but not necessarily limited to, false work, shoring, concrete form work and excavation plans.

## **201 General Contract Requirements**

- A. Contractor shall perform the Work in strict accordance with the Contract. Contractor shall provide and pay for all supervision, labor, Materials, tools, equipment and machinery, water, electricity, fuel, heat, utilities, transportation, and other facilities and services, except for those specifically identified in the Contract as provided by Trinity Metro or others, necessary for the proper execution and completion of the Work by its own means and methods. Contractor is responsible for ensuring that the quality of finished work meets all aspects of the Contract, Contract Documents, Plans and Specifications, federal, state, and local laws and all requirements of any authority having jurisdiction.
- B. Contractor is solely responsible for the completed Project and is the single point of responsibility for quality, cost and schedule. Contractor is responsible for all construction means, methods, techniques, sequences and procedures for building the Project in a good and workmanlike manner, and for coordinating all portions of

the Work. Contractor shall be responsible for all damages to persons or property that occur as a result of Contractor's fault or negligence and shall take proper safety and health precautions to protect the Work, the workers, the public and the property of others. Contractor shall be responsible for all Materials delivered and Work performed.

- C. If any references have been made in the Specifications to responsibilities of work by crafts and specialty or trade contractors, these references were made for the convenience of preparing the Specifications and are not intended to limit any responsibility of Contractor to provide a complete installation under the Contract. Whenever such references are made to any trade designation, Subcontractor, or specialty contractor, it is understood that Contractor is nevertheless responsible to Trinity Metro for the Work under the Contract, including for Work provided or performed by such persons as Subcontractors, Suppliers to Contractors.
- D. If Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

## **202 Ownership of Work and Materials**

- A. All Work performed by Contractor pursuant to the Contract shall be the property of Trinity Metro. Trinity Metro shall own all construction, and any data, documents, plans, specifications, working papers, computer programs, photographs, or other material produced by Contractor pursuant to the Contract, and Contractor hereby irrevocably assigns and transfers to Trinity Metro any and all copyrights for such material. To the extent that such programs used are internal, proprietary programs used by Contractor in the performance of the Work, Contractor will provide Trinity Metro such access to the programs as is necessary for Trinity Metro to be able to use the products and documents generated by the program, but Contractor is not required to transfer the copyrights or other intellectual property rights to the program to Trinity Metro.
- B. As security for partial, progress, or other payments, title to work for which such payments are made shall pass to Trinity Metro at the time of the payment. To the extent that title has not previously been vested in Trinity Metro by reason of payments, full title shall pass to Trinity Metro at delivery of the work at the location specified in the Contract.
- C. Unincorporated work to which Trinity Metro has received title by reason of progress, partial or other payments shall be segregated from other Contractor or Subcontractor



Materials and clearly identified as Trinity Metro property. Contractor shall be responsible for all Materials until they have been incorporated into the Work and the Work has been finally accepted by Trinity Metro.

- D. The title transferred as above shall in each case be good, and free and clear of any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any way that would result in any lien, security interest, charge, or claim upon or against said items.
- E. The transfer of title as provided above shall not imply acceptance by Trinity Metro, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to such items.
- F. Contractor shall insert provisions in its subcontracts sufficient to ensure compliance with the content of this Section.

### **203 Drawings and Other Data**

- A. All documents developed by Contractor in the performance of the Contract shall become the sole property of Trinity Metro and may be used by Trinity Metro on any other project without additional compensation to Contractor. Use by Trinity Metro of these documents on other projects does not confer any liability on Contractor.
- B. Trinity Metro shall be considered the “person for whom the work was prepared” for the purpose of authorship in any copyrightable work under 17 U.S.C. § 201(b). With respect thereto, Contractor agrees not to assert or authorize others to assert any rights or establish any claim under the design related patent and copyright laws. All design drawings, as-built drawings and specifications, in any form, shall contain a copyright mark of Trinity Metro, except for those drawings that are used internally by Contractor to develop designs for the Project.

### **204 Contract Order of Precedence**

- A. The General Provisions, Special Provisions, Plans, Specifications, Contract attachments and exhibits are essential to the Contract. All are intended to be complementary and to provide for completed work suitable for its intended use. A requirement occurring in one is as binding as though occurring in all. Where Plans and Specifications describe portions of the Work in general terms, but details are

incomplete or silent, it is understood that only the best general practice is to prevail and that only new Materials and first-quality workmanship are to be used. Omissions of details of Work that are manifestly necessary to carry out the intent of the Contract, or that are customarily performed, shall not relieve Contractor from the obligation to perform such Work. Notes on Plans are part of the Plans. No reliance shall be placed on dimensions scaled from any Plans.

- B. The documents referenced below are in descending order of precedence. Any conflict between any of the documents shall be resolved in favor of the document with higher precedence.
- Contract Form
  - Special Provisions
  - General Provisions
  - Scope of Work
  - Reference Documents, Standards, and Codes
  - Invitation for Bid (IFB) including plans and specification
  - Bid
- C. Contractor shall immediately notify Trinity Metro, in writing, of any ambiguity or conflict within or between documents, any error, omission, lack of necessary detailed description, or a detail, which is a potential code violation, which is discovered in the Specifications or Plans and request clarification and direction. Trinity Metro will provide clarification and direction as required to fulfill the intent of the specifications. Proceeding without the required notification and request for clarification or instruction shall be at Contractor's risk.

## **205 Contractor's Status**

Contractor is an independent contractor for all purposes, is not an agent nor an employee of Trinity Metro, and is entitled to no compensation from Trinity Metro other than that provided by the Contract. Contractor shall be fully responsible for all acts and omissions of its employees, Subcontractors, and Suppliers of any tier, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the Contract. No contractual or beneficiary relationship between any Subcontractor or Supplier of any tier of Contractor and Trinity Metro arises by virtue of the Contract. No contractual or beneficiary relationship between the federal government and Contractor, its Subcontractors, Suppliers or other third parties arises by virtue of the Contract. No provision of the Contract shall be for the benefit of any party other than Trinity Metro and Contractor.

## **206 TRINITY METRO's Right to Carry Out the Work**

If Contractor fails or refuses to carry out all or any part of the Work in accordance with the Contract requirements or within the Contract schedule and fails or refuses to correct

such deficiency within ten (10) days of receipt or written notice thereof from Trinity Metro, Trinity Metro, in its sole discretion and without waiving any other rights it may have, may elect to correct such deficiencies and charge Contractor the cost of such corrections. Nothing in this clause shall relieve Contractor of its obligation to perform the remainder of the Work in accordance with the Contract. Trinity Metro, at all times, shall have full and complete access to the Project and the Work.

**207 Applicable Law and Jurisdiction**

The Contract, as well as the rights, obligations and remedies of the parties, shall be governed by the laws of the State of Texas. Whenever there is no applicable state statute or decisional precedent governing the interpretation of or disputes arising under or related to the Contract, then federal common law, including the law developed by federal boards of contract appeals, the United States Court of Federal Claims, the United States Claims Court, and the Comptroller General of the United States, shall govern. Any suit or action arising from the Contract shall be commenced and prosecuted in the courts of Tarrant County, Texas or the United States District Court for the Northern District of Texas, as applicable, and the parties agree to submit to the exclusive jurisdiction and venue of these courts.

**208 Compliance with Laws and Regulations**

- A. Contractor shall adhere to all applicable federal, state, and local laws, regulations, and policies, including, but not limited to all applicable provisions of the Contract Work Hours and Safety Standards Act, Americans with Disabilities Act, equal employment opportunity laws, nondiscrimination in services and affirmative action laws, including all regulations implementing Executive Order No. 11246 of the President of the United States, as amended by Executive Order 11375, Section 402 of the Vietnam Readjustment Assistance Act of 1974, Section 503 of the Rehabilitation Act of 1973, and Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.* Contractor agrees not to discriminate, exclude from participation or deny of program benefits on the basis of race, color, creed, national origin, sex or age.
- B. Contractor shall comply with any and all of the laws and regulations discussed and addressed in this Section at its sole cost and expense and without any increase in Contract price or Contract time on account of such compliance, regardless of whether such compliance would require additional labor, equipment, and/or Materials not expressly provided for in the Contract. If appropriate, Contractor is permitted an increase in Contract time and the Contract Price, but not the Contractor's Fee, if laws, regulations, or directives change during the course of the Project. This requirement includes familiarization and compliance with the enactment of new laws or amendment of existing statutes, ordinances, or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the date Bids

were due on the Contract. Contractor shall ensure that all Subcontractors and Suppliers on the Project comply with all laws referenced herein and include appropriate flow down provisions in each of its lower-tier subcontracts as required by applicable laws, regulations, policies and related administrative practices, whether or not required herein.

- C. Contractor shall comply with, and make compliance a part of each subcontract in excess of one hundred thousand dollars (\$100,000.00), all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under nonexempt Federal Contracts, grants or loans, of facilities included on the EPA List of Violating Facilities. Any violation of these laws, rules, or regulations shall be reported immediately to the United States Environmental Protection Agency, Assistant Administrator for Enforcement (EN-329).
- D. Contractor agrees to comply with the following federal laws and regulations providing protections for employees involved in construction activities: 49 U.S.C. § 5333(a), 40 U.S.C. § 3141 *et seq.*, 18 U.S.C. § 874, and 40 U.S.C. § 3145.
- E. Contractor shall give all notices required for timely compliance with applicable federal, state, and local laws, ordinances, rules, regulations, and restrictions. Upon written request, Contractor shall furnish TRINITY METRO with satisfactory documentation evidencing compliance with the applicable requirements.
- F. Contractor shall be liable for and shall pay all fines, assessments, and other costs resulting from Contractor's violation of any applicable federal, state, or local statute, regulation, ordinance, or other restriction.

### **301 Notice to Proceed**

Except as specifically authorized in writing by Trinity Metro, Contractor is not authorized to perform Work under the Contract until the effective date of the Notice to Proceed ("NTP"). Any Work performed or expenses incurred by Contractor prior to Contractor's receipt of the NTP will be entirely at Contractor's risk. The NTP shall be given by TRINITY METRO no later than 30 days after Trinity Metro has received the executed Contract and all required bonds, insurance certificates and prerequisite submittals. Upon the effective date of the NTP, Contractor shall commence Work and prosecute the Work to completion within the time limits specified. The effective date of the first NTP shall be the first day of the Contract for purposes of the Construction Schedule. Trinity Metro shall designate its authorized representative at the time the NTP is issued.

**302 Permits**

With the exception of the specific permits, if any, referenced in the Special Provisions of the Contract that will be obtained by Trinity Metro, Contractor shall be solely responsible, without additional expense to Trinity Metro, for obtaining all necessary licenses and permits and for complying with all federal, state, county and municipal laws, codes, and regulations applicable to the performance of the Work, including, but not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the Work.

**303 Superintendence by Contractor**

- A. Contractor shall directly superintend the Work through its own organization at all times during performance of the construction portion of the Contract and until the Work is completed and accepted. Contractor shall give its personal attention to the Work and have competent personnel present on the Work at all times during its progress. Contractor may not subcontract its obligation under this Section.
- B. Contractor shall appoint one competent on-site Project Manager/Superintendent who shall have full authority to act on behalf of Contractor and any or all Subcontractors in all matters within the scope of the Contract including execution of Change Orders. The Project Manager/Superintendent or one designated assistant, competent to direct the Work and authorized to act on behalf of Contractor, shall be present on the Work Site at all times when Work is being performed by the Contractor or a Subcontractor or Supplier of any tier. Contractor shall furnish Trinity Metro with a written confirmation of the Project Manager's/Superintendent's authority to act for Contractor and a copy of the designated assistant's authorization.
- C. Trinity Metro reserves the right to require Contractor to remove any of its or its Subcontractor or Supplier personnel from the Contract and/or Work Site for reasonable cause, even if previously approved by Trinity Metro. Failure to immediately remove such personnel shall be considered a material breach of the Contract. Contractor shall replace any Subcontractor or Supplier so removed with a replacement Subcontractor or Supplier agreeable to Trinity Metro, at no additional cost to Trinity Metro

**304 Contractor Participation**

- A. Except as otherwise provided in the Contract, Contractor shall perform no less than the percentage of the Work specified in the Special Provisions, on the Work Site, with its own organization. Any items designated as "Specialty Items" in the Special Provisions, if subcontracted, will be deducted from the original Contract price before computing the amount of Work required to be performed by

Contractor's own organization.

- B. The phrase "Contractor's own organization" as used in the Contract includes only workers employed and paid directly by Contractor, equipment owned or rented by Contractor, and incidental rental of operated equipment.

**305 Cooperation by Contractor**

Contractor shall cooperate with Trinity Metro in the conduct of Contractor's operations under the Contract. Contractor shall assist Trinity Metro as required by the Contract. Trinity Metro may award other contracts in conjunction with this project. Other agencies may also be performing work, including utility relocation activities, by contract or otherwise, in support of this project. These activities may be underway in the proposed construction area during the life of the Contract. Contractor shall cooperate with Trinity Metro, other agencies, and Other contractors in scheduling and coordinating Contractor's Work with the work of Other Contractors to minimize conflicts. Contractor shall not commit or permit any act which will interfere with the performance of the work by any agency, Other Contractor, or authority.

**306 Site Investigation and Conditions Affecting the Work**

- A. Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, including, but not limited to, visiting the sites for the Work; carefully examine local conditions; informing itself by its independent research, tests, and investigations of the difficulties encountered and judge for itself the accessibility of the Work and all attenuated circumstances affecting the cost of doing the Work and the time required for its completion; and to obtain all information required to make a bid. Contractor has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to:
1. Conditions bearing upon transportation, disposal, handling, and storage of material;
  2. The availability of labor, water, electric power and roads;
  3. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
  4. The conformation and conditions of the ground; and
  5. The character of equipment and facilities primarily needed to and during work performance.
- B. Contractor further acknowledges and represents that all such circumstances are

included in its Bid, Contract Price and the contract schedule.

- C. Contractor acknowledges that its project baseline schedule includes an allowance for the normal number of days in which the Work may be partially or totally delayed because of weather during the seasons and at the locations where the Work will be performed. Contractor shall not be entitled to excusable delays or compensation for such normal weather days.
- D. Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, access to the site, and territory surrounding the site, including all exploratory work done by Trinity Metro, as well as from the drawings and specifications made a part of the Contract and referenced Materials made available by Trinity Metro. Any failure of Contractor to take the actions described and acknowledged in this paragraph will not relieve Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to Trinity Metro. Contractor is relying upon its own estimates, investigations, tests, and other data which are necessary for full and complete information upon which the bid may be based.
- E. After award of the Contract and in preparation of its final work, Contractor shall complete geotechnical and utility investigations, including the use of appropriate utility locating technology, to satisfy itself of existing conditions.
- F. Trinity Metro assumes no responsibility for any conclusions or interpretations made by Contractor based on the information made available by Trinity Metro. Nor does Trinity Metro assume responsibility for any understanding reached or representation made by any of its officers or agents before the execution of the Contract, concerning conditions which can affect the work, unless that understanding or representation is expressly stated in the Contract.
- G. If, at any time during the performance of the Contract, Contractor becomes aware of an actual problem, fault or defect in the Project or any non-conformance with any Contract document, federal, state or local law, rule or regulation, Contractor shall give immediate written notice thereof to Trinity Metro. If Contractor is aware of any such problem, fault, defect or non-conformance, or should be aware through proper diligence of any such problem, fault, defect or non-conformance, and Contractor fails to give the required notice, Contractor shall assume full responsibility therefore and shall bear all costs attributed thereto, including indemnifying Trinity Metro under the indemnification requirements of the Contract.
- H. Contractor agrees to comply with the following federal regulations: the

Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 *et seq.*, U.S. DOT regulations, "Seismic Safety," 49 CFR Part 41, Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," and 42 U.S.C. § 7704 note.

**307 Differing Site Conditions**

- A. Contractor shall, within three (3) days of first observance and before the conditions are disturbed, give a written notice to Trinity Metro of:
  - 1. Subsurface or latent physical conditions at the site which differ materially from those reasonably anticipated and indicated in the Contract; and which could not have been discovered by Contractor's reasonable investigation;
  - 2. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided in the Contract; and which could not have been discovered by Contractor's reasonable investigation; or
  - 3. Unknown utilities that Contractor could not discover from the Contract Documents or through contact with the utility owner.
- B. Trinity Metro shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for performing any part of the work under the Contract, whether or not changed as a result of conditions, an equitable adjustment will be made and the Contract modified in writing accordingly.
- C. No request by Contractor for an equitable adjustment to the Contract under this Section shall be allowed unless Contractor has given the written notice required.
- D. No request by Contractor for an equitable adjustment of the Contract for differing site conditions will be allowed or shall be made after final payment under the Contract.

**308 Historical, Scientific, and Archaeological Discoveries**

- A. Contractor shall immediately give an oral and written report to Trinity Metro of the discovery of any articles of historical, scientific, or archaeological significance. Contractor shall take all necessary steps to preserve the article and shall cease operations, which would affect the find until otherwise directed by Trinity Metro but continue with all other unaffected operations. The future operations of



Contractor with respect to the discovery, including disposition of the articles, shall be decided by Trinity Metro. Trinity Metro shall have sole and exclusive title to any discovered articles.

- B. Trinity Metro shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for performing any part of the work under the Contract, whether or not changed as a result of conditions, an equitable adjustment will be made and the Contract modified in writing accordingly.
- C. No request by Contractor for an equitable adjustment to the Contract under this Section shall be allowed unless Contractor has given the written notice required.
- D. No request by Contractor for an equitable adjustment of the Contract for differing site conditions will be allowed or shall be made after final payment under the Contract.

**309 Protection of Existing Site Conditions and Property**

- A. Through the date of Final Acceptance, Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site which are not to be removed and which do not unreasonably interfere with the work required under the Contract. Contractor shall remove trees only when specifically authorized to do so and shall avoid damaging vegetation that will remain in place.
- B. Contractor shall protect from damage all existing improvements, facilities, utilities, and other property:
  - 1. At or near the work site.
  - 2. On adjacent property of a third party.

Contractor shall repair any damage to such property, including that belonging to any third party, resulting from failure to comply with the requirements of the Contract or failure to exercise reasonable care in performing the Work, at no expense to Trinity Metro. If Contractor fails or refuses to repair the damage promptly, Trinity Metro may have the necessary work performed and charge the cost to Contractor, which charges shall be promptly paid by Contractor.

- C. Contractor shall avoid damaging existing buildings, equipment, and vegetation on or about premises owned by, or under the control of Trinity Metro, Trinity Rail Express, and Trinity Metro's Consultants while the work is being performed. If

Contractor causes damage to any of this property, Contractor shall replace or repair the damage at no expense to Trinity Metro as Trinity Metro directs. If Contractor fails or refuses to make such repair or replacement, Contractor shall be liable for the cost, which may be deducted from the Contract price.

- D. Through the date of Final Acceptance, Contractor shall take proper measures to protect adjacent and adjoining property, which might be injured by any pieces of construction and in any case of an injury or damage resulting from any act or omission on the part of Contractor, shall be restored at Contractor's expense.
- E. Facilities and installations of various utilities may be present in the area of the Work. Contractor shall cooperate with owners of utilities to protect any above ground and below ground utility property. Contractor shall contact the utility owners and arrange operations and schedules to minimize any interruption of utility services. Contractor shall provide utility owners with sufficient notice to allow adequate time for location of utility services, scheduling of outages, or other utility activities needed to accommodate Contractor's operations. Contractor shall determine and verify the exact locations and conditions of existing utility property and specifically underground utility property with the utility owner prior to performing excavation or other work in the area. Contractor shall be wholly responsible for all costs, including costs for restoration of services, and resulting schedule impacts, when utility services are damaged or interrupted by its operation.
- F. In the event of disruption or threat to utility services as a result of construction related activities, regardless of cause, Contractor shall promptly notify Trinity Metro, the affected utility, and fire and/or police agencies and other emergency personnel as necessary, and shall cooperate with those agencies to restore said utility services as soon as possible.
- G. Operation of utility or agency water valves and hydrants by unauthorized personnel is strictly prohibited without obtaining written permission from the applicable authority prior to using any water hydrant or operating any water valve. No work shall be undertaken around fire hydrants until provisions for continued access and service have been approved by the local fire authority. The cost for authorizing usage of water or other utilities shall be born wholly by Contractor.

#### **401 Materials**

- A. Through the date of Final Acceptance, Contractor shall be solely responsible for all Materials delivered to the work site or an authorized storage site.
- B. Contractor shall use or incorporate in the work only new Materials conforming to the Plans and Specifications. New material shall be used in the manufacturing of

products to be incorporated in the Work unless otherwise specified.

- C. All Materials except Materials specified by brand name or mark or manufacture, furnished for use or incorporation in the Work, shall be covered by quality certifications, test results or other documentation as required by the Contract to establish compliance of the products with contract requirements. Unless specific tests are required by the specifications, Contractor may provide certifications to establish acceptability of the products furnished. Materials or products, which require certification or other documentation, shall not be incorporated until certifications have been delivered and the product approved by Trinity Metro for incorporation.
- D. Trinity Metro's acceptance of Materials on the basis of compliance documentation, inspection or testing shall not relieve Contractor of the obligation for conformance with the Contract.
- E. References to standards, material specifications, test methods, or other publications of Trinity Metro, American Association of State Highway and Transportation Officials (AASHTO), American Society for Testing and Materials (ASTM), other governmental agencies, or other recognized national organizations are those officially adopted by those agencies and organizations and shall be to the most current revision or edition, unless otherwise specified.
- F. When the Contract requires documentation that Materials comply with a given specification or standard, Contractor shall provide documents, which include a certification that the material conforms with all applicable Contract requirements. The documentation shall identify the Material, list the applicable specifications and tests covered by the certification, describe the source of the Material, and the identity and/or quality of Material certified. The certifying document shall originate with manufacturer or producer of the Material and shall bear the signature of a person qualified to perform the certification and authorized to sign on behalf of the manufacturer or producer. If applicable, the certificate shall list any marking or other identification of the certified Material.
- G. For fabricated or manufactured Materials, in addition to the documentation required by Paragraph F of this Section; the Supplier shall furnish documentation that the fabrication of manufacturing process complies with Contract requirements. The documentation shall list the name and address of the manufacturer or fabricator, the specific process covered by the certification, procedures and equipment used, tests performed and testing frequency, and any other pertinent information required to demonstrate Contract compliance.
- H. Trinity Metro may require testing, at Contractor's expense, of Materials, which are delivered without acceptable identification, certification or other required

documentation. Work, which incorporates Materials for which the required documentation has not been provided, will be considered nonconforming Work.

- I. Trinity Metro reserves the right to sample and test any Material provided for use or incorporation into the Work. Contractor shall furnish, at no cost to Trinity Metro, all samples requested for testing. If Trinity Metro tests indicate that the Material tested does not comply with the Contract requirements, all Material covered by the same certification as the tested sample will be considered as nonconforming.
- J. If, at any time, Trinity Metro deems Contractor's quality control measures are not providing adequate inspection and testing, Contractor shall immediately take corrective action as required by Trinity Metro.
- K. Trinity Metro may, at its discretion, authorize payment for Materials not yet incorporated into the Work, whether or not delivered to the site, subject to the following conditions:
  1. The stored Materials must be long-lead items that affect the construction critical path or items where the purchase and storage would benefit the Project and have been agreed to by Trinity Metro.
  2. The long-lead items must be identified and agreed to as part of the approval process for the baseline schedule or any subsequent revisions of the baseline schedule (not monthly schedule updates).
  3. Material to be incorporated into the Work within ninety (90) days after receipt shall not be considered for progress payment prior to incorporation.
  4. Stored Material shall be segregated to preclude double counting.
  5. As part of the Preliminary and/or Contract Invoice template, Contractor will submit to Trinity Metro a list of all Materials for which Contractor requests payment under this Section. Trinity Metro will review the list and notify Contractor in writing of those items for which payment under this Section will be authorized. Trinity Metro will not authorize prepayment of undeliverable Materials, or for costs not incurred.
  6. Material must be delivered to the Work Site, or delivered to Contractor, and promptly stored by Contractor in an insured warehouse, storage yard, or similar suitable place within 5 miles of the Work Site, or a greater distance, all subject to approval by Trinity Metro. Proof of insurance shall be submitted to Trinity Metro. Trinity Metro will at all times have access to such Materials and storage locations. If the Materials are stored off the

Work Site, Contractor will provide documentation of Trinity Metro's right of access to the Materials in a form satisfactory to Trinity Metro. Before any payment is made for the Material, Contractor will furnish to Trinity Metro evidence of ownership and properly executed bills of sale warranting that the Materials are free from all liens, security interests, and other encumbrances.

7. Contractor will ensure the security of the Materials, will be strictly liable to Trinity Metro for any damage to them, and will replace damaged Materials without cost to Trinity Metro.

**402 TRINITY METRO Furnished Materials**

- A. Materials listed in the Contract as Trinity Metro furnished will be available to Contractor free of charge within the Work Site and at the times indicated in Contractor's approved schedule, unless otherwise specified.
- B. With respect to Trinity Metro furnished Materials, Contractor shall:
  1. Be responsible for all costs for loading, unloading, transporting, storing and handling Materials until incorporated into the Work;
  2. Install and make the Materials fully operational, in accordance with the Contract and manufacturer's requirements, including furnishing all incidental parts and Materials, and scheduling code and other required inspections and tests;
  3. Commencing on the date of the Notice To Proceed, or, if not in storage when the Notice To Proceed is issued, on the date Material is made available to Contractor, whichever is later, assume responsibility for storage and demurrage charges and replacement of Materials lost or damaged from any cause, at no cost to Trinity Metro; and
  4. Notify Trinity Metro immediately upon discovery of any deficiency or defect in Materials furnished.
- C. All Materials furnished by Trinity Metro will remain the property of Trinity Metro. Excess Material not incorporated in the Work, shall be stored on site at a central, accessible location approved by Trinity Metro.

**403 Handling and Storage of Materials**

- A. Materials shall be securely stored, as to preserve their quality and fitness for the Work. Stored Materials, even though determined acceptable before storage, may again be inspected prior to their use in the Work. Stored Materials shall be

arranged so as to facilitate their prompt inspection. Approved portions of the right of way or other Trinity Metro property may be available for use by Contractor. Any additional space required therefore must be provided by Contractor at Contractor's expense. Private property shall not be used for storage purposes without written permission of Trinity Metro or lessee. Any use of private property by Contractor shall comply with all applicable zoning, land use restrictions, and other regulatory requirements. Copies of such written permission shall be furnished to Trinity Metro upon request.

- B. All Materials shall be handled and transported in such a manner as to preserve their quality and fitness for the Work.
- C. Contractor shall be responsible for stored Materials lost, stolen, or damaged and shall promptly replace such lost, stolen, or damaged Materials at no cost to Trinity Metro.

#### **404 Environmental Requirements**

In addition to requirements set forth in other sections of the Contract, including the Scope of Work, Contractor shall ensure that the requirements of this Section are fulfilled and incorporated into its procedures and processes as well as those of any Subcontractors. All materials utilized by Contractor on the Project shall comply with all applicable local, state and federal laws and regulations.

- A. Contractor is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Materials. If Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by Contractor, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Trinity Metro in writing.
  - 1. The term "Hazardous Materials" means any substance or compound, whether solid, liquid or gaseous: (i) which is listed, defined or regulated as a "hazardous substance", "hazardous waste", "extremely hazardous waste", "solid waste", "toxic substance", "hazardous substance", "hazardous material" or "regulated substance" or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law; or (ii) which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, lead, or motor fuel or other volatile organic compounds; or (iii) which causes or poses a threat to cause a contamination or nuisance on the Work Site or any adjacent property, or (iv) which causes or poses a threat to cause a

hazard to the environment or to the health, safety or welfare of persons on or about the Work Site.

2. The term "Environmental Law" means any federal, state or local law, statute, guidance or policy statement, ordinance, code, rule, regulation, license, authorization, decision, order, injunction or decree, which pertains to health, safety or the environment (including, but not limited to, ground, air, water or noise pollution or contamination, and underground or aboveground tanks) and shall include without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act of 1976, as amended, the Occupational Health and Safety Act, the Toxic Substances Control Act, the Texas Water Code and the Texas Solid Waste Disposal Act and any other state or federal environmental statutes.
- B. If the material or substance was on the site prior to the issuance of the Notice to Proceed, Trinity Metro shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, to verify that it has been remediated to levels required by the Texas Commission on Environmental Quality. When the material or substance has been remediated, Work in the affected area shall resume upon written direction of Trinity Metro.
  - C. Except as provided in Subparagraph B., Contractor (with Trinity Metro's prior written approval of the laboratory) shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, Trinity Metro shall determine whether Contractor or Trinity Metro shall have the substance remediated to levels required by the Texas Commission on Environmental Quality. When the material or substance has been remediated, Work in the affected area shall resume upon written direction of Trinity Metro. The Contract time shall not be extended and the Contract Price shall not be increased, unless the material or substance to be remediated were not introduced to the Work Site by Contractor, and Contractor shall then pay for (or reimburse Trinity Metro for) the testing and remediation.
  - D. Trinity Metro shall not be responsible under this Section for materials or substances Contractor brings or introduces to the Work Site. Contractor shall be responsible for the fault or negligence in the disturbance, use and handling of materials or substances of Contractor, Subcontractor, Sub-subcontractor, or anyone directly or indirectly employed by any of them.
  - E. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE INDEMNITEES (AS DEFINED HEREIN IN SECTION 503 "INDEMNIFICATION") FOR ANY AND ALL DAMAGES INCURRED BY TRINITY METRO AS A RESULT OF CONTRACTOR'S ACTIONS WITH**

**RESPECT TO ALL APPLICABLE STATE AND FEDERAL ENVIRONMENTAL LAWS RELATED TO MATERIALS OR SUBSTANCES CONTRACTOR BRINGS TO THE WORK SITE, INCLUDING BUT NOT LIMITED TO FINES, PENALTIES, COSTS OF REMEDIATION AND REASONABLE ATTORNEY'S FEES. NO TIME EXTENSION SHALL BE GRANTED FOR BREACH OF THIS PROVISION.**

- F. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Work Site any Hazardous Materials, except in accordance with applicable environmental laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Materials into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water unless required by the Contract Documents. **IN THE EVENT CONTRACTOR ENGAGES IN ANY OF THE ACTIVITIES PROHIBITED IN THIS SECTION OR FAILS TO STOP WORK AS PROVIDED IN THIS SECTION, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY INDEMNIFIES AND HOLD TRINITY METRO AND ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES AND TENANTS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSES, CAUSES OF ACTION, SUITS AND LIABILITIES OF EVERY KIND, INCLUDING BUT NOT LIMITED TO, EXPENSES OF LITIGATION, COURT COSTS, PUNITIVE DAMAGES AND ATTORNEYS' FEES, ARISING OUT OF, INCIDENTAL TO OR RESULTING FROM THE ACTIVITIES PROHIBITED IN THIS SECTION OR CONTRACTOR'S FAILURE TO STOP WORK AS REQUIRED.** Contractor shall obtain from manufacturers and furnish to Trinity Metro Materials Safety Data Sheets (OSHA Form 20) for all materials incorporated into the Project by Contractor. TRINITY METRO hereby agrees that, as between Trinity Metro and Contractor, Trinity Metro will be responsible for Hazardous Materials on site which existed prior to Contractor performing Work on the Work Site or which are introduced to the Work Site by Trinity Metro, except as provided in this Section. Contractor will not be considered the generator of Hazardous Materials on site which existed prior to Contractor performing Work on the Work Site or which are introduced to the Work Site by Trinity Metro. If the Hazardous Materials were on the Work Site prior to Contractor's presence on the Work Site or were introduced to the Work Site by Trinity Metro, then, if appropriate, Trinity Metro will make an equitable adjustment to the Contract.
- G. No request by Contractor for an equitable adjustment to the Contract under this Section shall be allowed unless Contractor has given the written notice required.
- H. No request by Contractor for an equitable adjustment of the Contract for Hazardous Materials will be allowed or shall be made after final payment under the Contract.

**405 Substitution After Award of Contract**

- A. Use of any substitute item must be approved by Trinity Metro in accordance with



the terms of the Contract.

- B. Trinity Metro reserves the right to use the named or specified product or item to establish standards for equality, including aesthetic and visual characteristics, when specified in the technical specifications, performance, quality, availability and maintainability of the proposed product or item.
- C. Substitution will be considered by Trinity Metro when:
  - 1. The substitution is due to the unavailability of specified item;
  - 2. The substitution is required for compliance with a final interpretation of code requirements or insurance regulations;
  - 3. The specified item will not perform as specified;
  - 4. The manufacturer or fabricator does not certify or warrant performance of the specified item as required for its intended purpose; or
  - 5. The substitution is considered, in Trinity Metro's sole judgment, to be beneficial to the completed work.
- D. Contractor shall notify Trinity Metro of any inappropriate or unavailable products, equipment, services or techniques that may be called for by the Contract.
- E. Contractor must submit to Trinity Metro written requests for approval of Substitutions. Trinity Metro will consider only requests conforming to the requirements of this Section.
- F. Trinity Metro will be the sole judge of the acceptability of any proposed substitution. Contractor will be notified in writing of the approval or rejection of a properly submitted request. Contractor will not rely upon approvals made in any other manner. Trinity Metro's decision shall be final.
- G. Requests for substitutions shall be submitted to Trinity Metro through the Contract submittal process in sufficient time to avoid delays to the Work. Contractor shall be responsible for any delay or cost resulting from untimely submittal of substitution requests.
- H. Contractor has the burden of demonstrating that the proposed Substitution's function, quality and performance will be equal in all respects to that of the specified item.
- I. Contractor shall at the same time submit six (6) copies of the information listed below, with any additional information Contractor considers necessary to

support the Bid. The following information is required as a minimum:

1. The reason for the request;
  2. Complete data substantiating that the function, quality and performance of the proposed substitution will be equal or superior in all respects to the performance of the specified item;
  3. The impact of the proposed substitution on the construction schedule;
  4. The effect of the proposed substitution on the Contract price;
  5. The following information shall be included in the documentation for substitution of construction or fabrication methods:
    - a. Detailed description of the proposed methods; and
    - b. Drawings illustrating the proposed methods;
  6. Product identification, including, manufacturer's name and address, contact person and telephone number;
  7. Manufacturer's literature, including product description, performance and test data, and reference standards;
  8. Samples, if appropriate or required b Trinity Metro;
  9. The name and address of a reference person for similar projects, on which the product, equipment service, method or techniques were used, date of installation and reliability and service record, if appropriate or required by Trinity Metro;
  10. An itemized comparison of the proposed substitution with the specified product, equipment, service, method, or technique;
  11. Assurance that the proposed substitution will not affect dimensions or other elements of the work, alternatively, full disclosure of any such effects; and
  12. The name and address of the nearest Supplier of maintenance and service and repair services for the proposed substitution, and substantiation that adequate supplies of parts and repair services are readily available, if appropriate or required by Trinity Metro.
- J. Prior to making a request for a substitution, Contractor shall investigate the

proposed item and determine that it is equal in all respects to the item specified. In making the request for a substitution, Contractor represents that:

1. It will provide the same warranty for the substitution as for the item specified;
  2. It will coordinate installation of the substitution into the Work, making changes as may be required for the Work to be complete in all respects;
  3. Price and schedule data provided is complete and includes all related Contractor cost and schedule impacts;
  4. It waives all claims for additional time for performance and additional costs related to the substitution that may become apparent following Trinity Metro's approval of the substitution; and
  5. It will be responsible for the cost of performing any design or redesign including redesign of other affected parts of the Work and for securing Trinity Metro's approval of such design or redesign.
- K. Only complete requests submitted in accordance with this General Provision will be considered. The approval of Shop Drawings, Product Data, submittals, or other documents indicating or implying a substitution shall not constitute approval of such substitution.
- L. Trinity Metro will specifically approve or disapprove in writing all requested substitutions. If a substitution is approved, a Change Order will be prepared to incorporate the substitution into the Contract. The Change Order will include any associated price or schedule adjustment.
- M. Contractor shall not be entitled to an extension of time or reimbursement for additional costs associated with a substitution proposed due to the unavailability of a specified item. Extensions of time or reimbursement of additional costs for substitutions necessitated by deficiencies which render the specified item unacceptable will not be allowed when the deficiency was known or should have been known by Contractor.

#### **406 Inspection, Sampling and Testing**

- A. Contractor is responsible for performance of the Work and a quality plan including establishment of an inspection system, testing system and maintenance records that document the inspection and quality control activities. Inspection and testing by Trinity Metro does not relieve Contractor of responsibility for the quality and conformance of the work with Contract requirements. Inspections and testing are for the sole benefit of Trinity Metro, and any inspection or testing by Trinity Metro does not (i) relieve Contractor from its responsibility of providing quality control measures; (ii) relieve Contractor of damages to or loss of Material; (iii) constitute or imply acceptance; or (iv) affect Trinity Metro's rights. TRINITY

METRO may inspect and test all or any part of the work at any reasonable time.

- B. Contractor shall furnish Trinity Metro with adequate facilities required for safe access to the work for inspection and sampling and shall provide assistance in obtaining samples. Contractor shall advise Trinity Metro of the name and location of, and ensure that, manufacturers, producers and fabricators of Materials for the Contract provide access to their plants or facilities and provide proper facilities for sampling, inspection, and testing.
- C. Contractor shall give Trinity Metro sufficient notice of the location and availability of elements of the Work to allow for inspection, sampling and testing prior to incorporation of Materials or covering of the Work.
- D. TRINITY METRO may at any time prior to Final Acceptance require Contractor to uncover portions of the Work for inspection and testing. Contractor shall restore these portions of the Work to the standard required by the Contract. If the Work uncovered does not comply with the Contract, was done without required documentation, or if Trinity Metro was given insufficient notice to allow adequate time for inspection, sampling or testing, the uncovering and restoration shall be done at Contractor's expense.
- E. When the United States government participates in the cost of the Work covered by the Contract, or if Trinity Metro has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or may affect third party facilities, or if the Work is by law subject to inspection by any public body or official, properly authorized representatives of these organizations have the right to inspect the work affecting their interest or property. Their right to inspect will not make them a party to the Contract and will not interfere with the rights of the parties to the Contract. Instructions or orders of such parties will be transmitted to Trinity Metro.

**407 Subcontractors and Suppliers**

- A. No subcontract shall relieve Contractor of any of Contractor's obligations or liabilities under the Contract. Contractor shall be fully responsible and liable for the acts or omissions of all Subcontractors and Suppliers including persons directly or indirectly employed by them, their guests and invitees. Contractor shall have sole responsibility for managing and coordinating the operations of its Subcontractors and Suppliers, including the settlement of disputes with or between them.
- B. Nothing contained in the Contract shall be deemed to create a contractual relationship between any Subcontractor or Supplier and Trinity Metro.

- C. Contractor shall provide to Trinity Metro one (1) copy of all executed subcontracts associated with the Contract, including any changes or modifications to the subcontracts, within three (3) days of their execution.
- D. No Subcontractor shall be permitted to perform work associated with the subcontract until the Subcontractor (or Contractor on the Subcontractor's behalf) is in compliance with the insurance requirements specified elsewhere in the Contract, and has furnished satisfactory evidence of insurance to the TRINITY METRO.
- E. A Subcontractor may be rejected by Trinity Metro if they have breached a contractual obligation to Trinity Metro or if that Subcontractor failed to substantially perform the obligation to Trinity Metro or has an unacceptable safety rating, regardless of whether that failure was formally designated a breach of contract by the contracting agency. Failure to complete performance of an obligation on time, including, but not limited to, failure to meet a contract milestone date on a prior Trinity Metro contract, except as excused by Trinity Metro, shall be deemed a failure to substantially perform that obligation.
- F. Contractor shall request in writing Trinity Metro's written approval before replacing a Subcontractor. If Contractor wishes to replace a DBE Subcontractor, Contractor shall use good faith efforts to substitute another qualified DBE Subcontractor. Substitute Subcontractors will be evaluated in the same manner as Subcontractors previously identified.
- G. Contractor agrees that it will not engage or allow the engagement on the Project of any Subcontractors, Subconsultants, or Suppliers that are debarred or suspended, unless the appropriate exceptions under federal regulations have been met. Contractor agrees to review the "System for Award Management" (SAM) at <https://www.sam.gov/portal/public/SAM/>, if required by U.S. Department of Transportation regulations, 2 C.F.R. Part 1200. Contractor agrees to include and require its Subcontractors, Subconsultants, and Suppliers to include a similar condition in each lower tier covered transaction for the Project, assuring that the Subcontractors, Subconsultants, and Suppliers will comply with federal debarment and suspension requirements and review the "Excluded Parties Listing System."

#### **408 Payments to Subcontractors and Suppliers**

- A. Contractor shall comply with the provisions of applicable laws and regulations relating to Contractor's relations with Subcontractors. Payments by Contractor to Subcontractors and Suppliers with Trinity Metro Contracts are subject to the time periods established in the Texas "Prompt Payment Act", contained in Chapter

2251 of the Texas Government Code.

- B. All persons employed in the performance of the Work under the Contract, or any subcontracts hereunder, shall be paid not less than the general rates of per diem, holiday, and overtime wages prevailing in the locality of the Work of a similar character as detailed in the Special Provisions. Failure to comply with this provision shall subject Contractor to the penalties prescribed in Chapter 2258 of the Texas Government Code, as amended.
- C. Contractor will include in each subcontract for property or services entered into by Contractor and a Subcontractor or a Supplier for purposes of performing the Work under the Contract a payment clause that obligates Contractor to pay the Subcontractor for satisfactory performance under its subcontract within seven (7) days out of such amounts as are paid to Contractor by Trinity Metro under the Contract.
- D. A false certification to Trinity Metro under the provisions of the Payments clause may be a principal offense in violation of Section 37.10 of the Texas Penal Code.
- E. If Contractor has made application for payment to Trinity Metro, Trinity Metro has made payment to Contractor, and Contractor subsequently withholds or retains payments from a Subcontractor; Contractor will be obligated to pay interest to Trinity Metro equal to 12% per annum on the amount due the Subcontractor(s) beginning on the eighth day after Contractor was paid.
- F. Contractor will pay Subcontractors and Suppliers after completion of Subcontractor's work or delivery and acceptance of Materials within seven (7) days after payment from Trinity Metro for said Work and Materials.

**501 Emergency Work**

- A. In the event of an emergency which endangers life or property, Contractor shall take such immediate actions as may be reasonably necessary to safeguard life and property. Contractor shall notify Trinity Metro as soon as possible of the circumstances of the emergency and the actions taken. Contractor shall perform such additional work as may be directed by Trinity Metro either orally or in writing. Such oral orders will be confirmed in writing as soon as practicable.
- B. If Contractor performs emergency work, Contractor shall keep accurate records of actual costs in accordance with the Contract until such time as agreement on compensation is reached. Such records shall be subject to verification and audit by Trinity Metro. Keeping and verification of such records shall not be construed as an indication that all work performed was required or that this method of compensation is necessarily acceptable for such emergency work and shall not preclude the possibility of an agreement to pay for such emergency work on

another basis.

- C. When agreement is reached regarding compensation for the performance of emergency work, the Contract will be amended by issuance of a Change Order reflecting such agreement.
- D. In emergencies affecting the safety of persons or the work or property at the site or adjacent thereto, Contractor, without special instructions or authorization from Trinity Metro is obligated to act at its discretion to prevent threatened damage, injury, or loss. Contractor shall give TRINITY METRO prompt written notice of any significant changes in the Work or deviations in the Contract Documents caused thereby.

#### **502 Risk of Loss**

Unless otherwise provided in the Contract, Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to (a) the Work, (b) for any property of TRINITY METRO delivered to Contractor or for which Contractor has custody or control (including the Work Site), and (c) for any property of TRINITY METRO for which title has passed to Contractor, until TRINITY METRO accepts the property and the care, custody and control thereof. Contractor shall also be solely responsible, as between it and TRINITY METRO for all damages to persons or property that occur as a result of Contractor's fault or negligence, and shall hold TRINITY METRO and its representatives harmless from all such damages and related losses. Contractor shall also be solely responsible for all Work performed until completion and acceptance of the entire Work, except for any completed unit of Work for which TRINITY METRO has expressly accepted care, custody and control and risk of loss under the Contract.

#### **503 Indemnification**

Indemnity obligations are set forth in Paragraphs SP 24.1 through 24.7 of the Special Provisions to this Agreement, are incorporated herein, and shall be considered as both general and special provisions.

#### **504 Bonds and Additional Bond Security**

- A. Contractor shall be required to obtain performance and payment bonds and supply any security acceptable to Trinity Metro as follows:
  - 1. Performance Bonds: The penal amount of performance bonds shall be 100 percent of the Contract Price of any construction Work on the Project and any amendments to the Contract that increase the construction cost, unless Trinity Metro determines that a lesser amount would be adequate

for the protection of Trinity Metro;

2. Payment Bonds: The penal amount of the payment bonds shall be 100 percent of the Contract Price of any construction Work on the Project and any amendments to the Contract that increase the construction cost, unless Trinity Metro determines that a lesser amount would be adequate for the protection of Trinity Metro;
  3. Trinity Metro may, at its option and by notice to Contractor, require additional performance and payment bond protection if the Contract Price is increased;
  4. The increase in protection shall generally equal 100 percent of the increase in Contract Price;
  5. Trinity Metro may secure such additional protection by directing Contractor to increase the penal amount of the existing bond or to obtain an additional bond;
  6. Contractor shall furnish all properly executed bonds (including additional or increased bonds required by this section) to Trinity Metro within the time period specified in the Contract or any notice from TRINITY METRO requiring any increased or additional bonds under this Section;
  7. The surety company or companies providing the bonds must be authorized to conduct business in the State of Texas; shall be approved for the amount of the bonds and shall either hold a certificate of authority from the U.S Department of Treasury or have obtained reinsurance in accordance with the requirements of Chapter 3503 of the Texas Insurance Code; and
  8. Contractor shall be required to submit all required bonds within ten (10) days from the date of notice of the award or Trinity Metro may terminate Contractor for default.
  9. Performance and payment bonds shall meet all statutory requirements of the State of Texas (including Chapter 53 of the Texas Property Code and Chapter 2253 of the Texas Government Code.
- B. In addition to any increased or additional bonds required by Trinity Metro pursuant to Section A above, Contractor shall promptly furnish additional bonds or security acceptable to Trinity Metro required to protect Trinity Metro and persons supplying labor or Materials under the Contract if:
1. Any surety upon any bond, or issuing financial institution for other



security, furnished with the Contract becomes unacceptable to Trinity Metro;

2. Any surety fails to furnish reports on its financial condition as required by Trinity Metro;
3. The Contract Price is increased so that the penal sum of any bond becomes inadequate in the opinion of Trinity Metro; or
4. An irrevocable letter of credit used as security will expire before the end of the period of required security. If Contractor does not furnish an acceptable extension or replacement irrevocable letter of credit, or other acceptable substitute, at least thirty (30) days before an irrevocable letter of credit's scheduled expiration, Trinity Metro has the right to immediately draw on the irrevocable letter of credit.

#### **505 Required Insurance**

Contractor shall incorporate all the provisions of this Section into any and all subcontract agreements of any tier and shall require its Subcontractors and Suppliers to cooperate fully with Trinity Metro, its representatives, agents and assigns.

For any work under this Contract, and until Final Acceptance of the Work, Contractor, at its own expense, must promptly furnish to Trinity Metro's Insurance Administrator, certificates of insurance giving evidence that the following coverage is in force.

##### **1. Automobile Liability Insurance**

Commercial Automobile Liability insurance is required which covers the use of all owned, non-owned, and hired vehicles that are used in connection with the Project with limits and terms of not less than the following:

- a. \$1,000,000 Bodily Injury — Per Person
  - b. \$1,000,000 Bodily Injury — Per Accident
  - c. \$1,000,000 Property Damage — Per Accident or
  - d. \$1,000,000 Combined Single Limit; and
  - e. MCS-90 endorsement required for transporting hazardous materials or waste
  - f. Endorsement removing exclusions for operations within 25 feet of a railroad
- Coverage applies to both on-site and off-site activities.

##### **2. Worker's Compensation Insurance**

Worker's Compensation Insurance is required with statutory limits with All States endorsement and Employer Liability Limits and terms of not less than the following:

- a. \$1,000,000 Bodily Injury with Accident — Each Accident
- b. \$1,000,000 Bodily Injury by Disease — Policy Limit

- c. \$1,000,000 Bodily Injury by Disease — Each Employee  
Applies to both on-site and off-site activities

### 3. Commercial General Liability Insurance

Commercial General Liability Insurance is required with limits and terms as follows:

- a. Combined Bodily Injury and Property Damage Limit of \$10,000,000 per occurrence, \$10,000,000, General Aggregate, \$10,000,000 Products and Completed Operations, including the following terms, conditions and endorsements:
    - i. Occurrence Basis
    - ii. No Exclusions for Demolition Work
    - iii. Contractual Liability endorsement
    - iv. Products/Completed Operations to remain in place 5 years after project completion
    - v. Additional insured endorsements for ongoing and completed operations
    - vi. Broad Form Property Damage;
    - vii. No exclusion for Independent Contractors.
    - viii. Primary and Non-Contributory Endorsement
    - ix. Endorsement removing exclusions from contractual liability coverage for operations within 25 feet of a railroad
4. Builder Risk Insurance covering all risks of direct physical loss, in an amount of insurance equal at all times to the replacement value of materials delivered and labor performed. The policy shall be insured jointly in the names of the Contractor and Trinity Metro.
- a. TRINITY METRO and its directors, officers, representatives, agents, employees, Consultants, Dallas Area Rapid Transit, Herzog Transit Services, Inc., Herzog Technologies Inc., BNSF Railway Company, and National Railroad Passenger Corporation (“Amtrak”), Dallas, Garland and Northeastern Railroad and Union Pacific shall be endorsed as additional insureds.
  - b. Coverage applies to off-site activities

### 5. Contractor’s Equipment

Contractor and Subcontractors of any tier shall insure or self-insure risk of loss or damage to equipment, tools, or personal effects, owned, rented, leased or borrowed to or in the care, custody or control of Contractor, Subcontractor(s) of any tier, or any person(s) furnishing labor or Materials. TRINITY METRO will not be responsible for any loss or damage to, or for obtaining insurance for equipment, tools, or personal effects, owned, rented, or leased to or in the care, custody or control of Contractor or Subcontractors of any tier.

#### 6. Additional Insureds

The Contractor required insurance (except for Workers' Compensation and Professional Liability insurance) shall include provisions or endorsement naming Trinity Metro, its Consultants, Dallas Area Rapid Transit, Herzog Transit Services, Inc., Herzog Technologies Inc., BNSF Railway Company, and National Railroad Passenger Corporation ("Amtrak"), Dallas, Garland and Northeastern Railroad and Union Pacific and their representatives, officers, Board Members, directors, and employees as additional insureds with respect to Work or operations connected with the Contract for insurance required under this Section.

#### 7. Certificates of Insurance

Prior to commencing work and within ten days of NTP issued, Contractor shall provide Trinity Metro with Certificates of Insurance evidencing the insurance required under the Contract. The Certificates shall include Contractor's name, name of the Contract, TRINITY METRO's Contract number, and reference to all of the provisions and endorsements required by this Section. The Certificates shall be signed on behalf of the insurer by its Authorized Representative. If requested in writing by Trinity Metro, Contractor agrees to furnish copies of such policies, or policy forms, certified by an Authorized Representative of the insurer.

Contractor and its Subcontractors of any tier will provide Trinity Metro's Insurance Administrator with a certificate of insurance setting out the above coverage, limits, and amendments to the certificate necessitated by changes to the Work to be performed under the Contract until the date of final payment.

All required certificates shall be forwarded to the insurance administrator at the following address:

TRINITY METRO  
Attention: Procurement  
801 Grove Street  
Fort Worth, Texas 76102

#### 8. Insurance in Force

The Contractor provided insurance and additional insured endorsements on such policies shall remain in force until the Work described in the Contract has been completed and accepted by Trinity Metro, or in any event, not less than of one year after Final Acceptance of the Work. If for any reason insurance coverage is not kept in force, all Work will be stopped until an acceptable Certificate of Insurance is provided to Trinity Metro.

#### 9. Notice of Cancellation

Insurance policies and certificates of insurance shall specifically provide that a thirty (30) day notice of cancellation, non-renewal, or material change be sent to the Insurance Administrator:

TRINITY METRO  
Attention: Procurement

801 Grove Street  
Fort Worth, Texas 76102

#### 10. Waiver of Subrogation

To the extent a loss is covered by Contractor provided insurance required herein, Contractor agrees to waive all rights of subrogation or recovery against TRINITY METRO, its Consultants, Trinity Railway Express, Fort Worth & Western Railroad, Dallas Area Rapid Transit, Grapevine Vintage Railroad, Amtrak, Kansas City Southern Railroad, Dallas, Garland and Northeastern Railroad, and Contractor's Subcontractors of any tier, performing Work on the Project. Contractor shall ensure that all its Subcontractors shall provide the same waiver. Contractor shall require all policies of insurance that are in any way related to the Contract and that are secured and maintained by Contractor and all tiers of Subcontractors to include clauses providing that each underwriter shall waive all of its rights of recovery, under subrogation or otherwise, against Trinity Metro, Trinity Metro's Consultants, Trinity Railway Express, Fort Worth & Western Railroad, Dallas Area Rapid Transit, Grapevine Vintage Railroad, Amtrak, Kansas City Southern Railroad, Dallas, Garland and Northeastern Railroad, and their representatives, officers, Executive Committee Members, directors and employees.

#### 11. Approval of Forms and Companies

All insurance described in this Contract shall be written by an insurance company or companies satisfactory to Trinity Metro, and shall be in a form and content satisfactory to Trinity Metro. No party subject to the provisions of this Contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein. A Best's rating of A- or better is required of all companies that provide insurance on the Project.

#### 12. Contractor Expense

Any type of insurance or any increase of limits of liability not described above that Contractor or its Subcontractor of any tier requires for its own protection or on account of any statute shall be its own responsibility and at its own expense.

#### 13. No Release

The carrying of the above-described insurance shall in no way be interpreted as relieving Contractor of any other responsibility or liability under this agreement or any applicable law, statute, regulation or order.

### **506 Drug Free Workplace**

Contractor is required to maintain a drug free workplace. For purposes of this clause, the workplace is the site for the performance of work done in connection with the Contract.

A. Definitions – As used in this clause, the following terms means:

1. "Alcohol" – Ethyl alcohol and any beverage containing ethyl alcohol.

2. "Controlled Substance(s)" means a substance including drug and an immediate precursor noted in Schedules I through V of subchapter A of the Tex. Controlled Substances Act, Tex. Rev. Civ. Stat. Ann Articles 481.032 – 481.036. These substances, include, but are in no way limited to the following: marijuana, heroin, cocaine, LSD, concentrated cannabis, hashish, hash oil, morphine or its derivatives, mescaline peyote, phencyclidine (PCP, Angel Dust), opium, opiates, methadone, Quaaludes, amphetamines, "exotic" or "designer" drugs, benzodiazepines, codeine, barbiturates, phenobarbital or valium.
  3. "Drug Free Workplace" means any site for the performance of work done in connection with the Work of the contract with Trinity Metro and at which all employees are prohibited from using alcohol or from engaging in unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
  4. "Employee means an employee of Contractor or Subcontractor who may be directly engaged in the performance of work under the Contract with Trinity Metro.
  5. "Reasonable Suspicion" means the presence or absence of specific intena identified in Contractor's drug-free workplace program, which indicates the possibility that a person(s) is under the influence of alcohol or a controlled substance as observed by Contractor's supervisory personnel or supervisor of Trinity Metro.
  6. "Safety Sensitive Task" means any category of work performed which, if performed by an impaired person (under the influence of drugs or alcohol would pose a serious risk of personal injury or death to the employee or others; or could compromise the quality of the Work of the Contract; or could pose a safety risk with Trinity's Metro operation of its public transportation system or rail line.
- B. Contractor shall implement a Drug-Free Workplace Program, with minimum standards as set forth herein. Contractor's program shall provide for mandatory drug testing of employees (a) no more than seven (7) days prior to an employee's assignment of the work of the Contract for safety sensitive tasks; (b) as part of follow up counseling or rehabilitation; and (c) as part of a voluntary employee drug testing program.
- C. The program may, at Contractor's discretion, include mandatory employee drug testing under the following circumstances:
1. As part of or as a follow-up to counseling or rehabilitation for controlled

substance use; or

2. As part of a voluntary employee drug testing program.
- D. A random testing procedure to detect the use of alcohol or a controlled substance by employees performing safety sensitive tasks is required as part of Contractor's program for the purpose of preventing or deterring hazardous performance. The procedure shall require that, at a minimum, five percent (5%) of Contractor's employees will be randomly tested within the Contract period or within each year of the contract period, whichever period is shorter.
- E. All testing by or on behalf of Contractor because of a requirement in the Contract shall be conducted only for employees engaged (or to be engaged) in safety sensitive tasks and only for use of alcohol or a controlled substance and shall be conducted in a manner and under written policies that minimize the intrusion on the employee's privacy and personal dignity. This provision shall not preclude Contractor from adding its own additional testing requirements.

Contractor shall notify Trinity Metro if an employee or potential employee who is or will be assigned to the Work of the Project becomes ineligible for continued employment on the Project either as a result of random testing, tests positive prior to the assignment, post-accident testing or other employer sponsored testing. Contractor will not assign to the Project any employee who is determined to be ineligible during the initial screening process for Trinity Metro's Project.

- F. Contractor shall publish a statement notifying employees that the use of alcohol at the workplace or the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance by employees at any time is prohibited and specifying the actions that will be taken against employees for violations of such prohibition.
- G. The program must require each employee who will perform a safety sensitive task, prior to working under Trinity Metro's Contract to:
1. Acknowledge in writing Contractor's drug-free workplace program; and
  2. Give advance written consent to any drug testing that may be conducted under Contractor's program and to the use of test results for decisions related to employment, disciplinary action, or continued employment. Contractor will agree, in connection with the employee's consent, that the results of testing for alcohol and controlled substances will not be voluntarily referred to any law enforcement agency. If Contractor is subject to a collective bargaining agreement:
    - a. the procedure for obtaining the individual employee's

acknowledgment and consent must be consistent with Contractor's obligations under the collective bargaining agreement; and

- b. employees shall have the right to be accompanied by a union representative when any specimen is obtained for testing.
- H. Contractor will establish a drug-free awareness program to inform its employees about:
1. The dangers of drug abuse in the workplace;
  2. Contractor's policy of maintaining a drug-free workplace;
  3. Any available drug counseling, rehabilitation, and employee assistance programs; and
  4. The penalties that may be imposed upon employees who refuse to submit to required testing and for other violations of the drug-free workplace program including, but not limited to, being unable to remain employed at the workplace until approval to return is obtained from Trinity Metro.
- I. Contractor's drug-free workplace program shall, at a minimum, include:
1. Policies and procedures for specimen collection, chain of custody for specimens, laboratory qualification standards, laboratory analysis procedures, quality control requirements, and test result reporting procedures which substantially conform to the material requirements of the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the U.S. Department of Health and Human Services in effect on the date of award of the Trinity Metro's construction contract;
  2. Procedures for Contractor's employees to report their use of prescription drugs used in the course of medical treatment or which have been prescribed and authorized for use by a licensed medical practitioner;
  3. The criteria Contractor's will use for "reasonable suspicion" testing; and
  4. The levels of alcohol or controlled substances which will be used in conjunction with a determination that an employee is "under the influence" or is "impaired by the effects of" alcohol or controlled substance(s).
- J. Contractor shall display a notice, prominently placed near each entrance to the

workplace, stating that, by entering the premises, persons are consenting to an inspection of themselves and their property including, but not limited to, their clothing, vehicles, briefcases, lunch boxes, tool boxes, purses, and packages.

- K. Contractor agrees to use its best efforts to establish and maintain a work environment free of use by employees of alcohol or controlled substances through implementation of the program requirements. Contractor shall prepare and maintain records in sufficient detail to demonstrate compliance with the requirements of this clause including, but not limited to, certifications from Subcontractors and records of drug or alcohol tests conducted during performance of the Contract. Such records shall be subject to inspection and audit by Trinity Metro, and Contractor's noncompliance may authorize TRINITY METRO to withhold all or any portion of any payments due Contractor until Contractor demonstrates compliance.
- L. A Drug-Free Workplace Program clause identical to this clause (except for changes appropriate for designation of the parties), including this subparagraph, will be included in every subcontract entered into in connection with the Contract.
- M. Employees testing positive for illegal drug use, shall be prohibited from working and/or being assigned to any Trinity Metro construction project for a one (1) year i.e., 365 days period, beginning from original test failure date. After the one (1) year prohibition period has elapsed, the individual may re-test; and if achieves a negative drug test, then he/she can be granted access to the Project.

**507 Safety and Precaution**

- A. At all time, Contractor shall comply with Trinity Metro's Construction Safety Manual in Section 8 as minimum safety requirements. Contractor's failure to comply with TRINITY METRO's Construction Safety Manual shall be deemed a material default under the Contract. Contractor shall take proper safety and health precautions to protect the Work, the workers, the public and the property of TRINITY METRO and of all third parties who may be affected by prosecution of the Work.
- B. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and shall take all necessary actions, including implementation of the requirements of Trinity Metro Construction Safety Manual in order to prevent damage injury, or loss to:
  - 1. All employees on the Work and other persons who may be affected thereby;



2. All the Work and all equipment and Materials to be incorporated therein, whether in storage on or off the Work Site; and
  3. Other property at the Work Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities except as designated for removal, relocation, or replacement as part of the Work.
- C. The Work shall be performed under methods and conditions in full compliance with Construction Safety and Health Regulations of the U.S. Occupational Safety and Health Administration, the State of Texas or local laws, wherever more rigid.
  - D. Contractor shall immediately investigate and analyze the circumstances leading to an accident and make any changes to the Work methods and conditions in order to prevent future accidents. Contractor shall maintain accurate records of all accidents incident to Work performed under the Contract resulting in death, traumatic injury, occupational disease or damage to property, Materials, supplies or equipment.
  - E. Contractor's duties and responsibilities for the safety and precaution of the Work shall continue until such time as the entire Work is completed and Final Acceptance has been made. Contractor shall coordinate its work with TRINITY METRO.
  - F. Trinity Metro retains the right, but does not have the responsibility, to consent to and conduct on-site inspections pursuant to federal, state and municipal government occupational safety and health law requirements. This includes, but is not limited to, all accidents, investigations, general schedule, complaints and follow-up safety and health inspections conducted by federal, state, local government and Trinity Metro safety and environmental health officials.
  - G. TRINITY METRO has the right to stop Work for any safety related issues. Trinity Metro, when it considers doing so is warranted, will notify Contractor of any noncompliance with safety requirements and the corrective action required. This notice, when delivered to Contractor, shall be deemed sufficient notice of noncompliance and corrective action. If Contractor fails or refuses to take corrective action promptly, Trinity Metro may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

#### **601 Changes in the Work**

- A. TRINITY METRO may, at any time, without notice to the sureties if any, by written order designated or indicated to be a change order, make changes in the Work within

the general scope of the Contract and such changes shall not be considered as waiving or invalidating any conditions or provisions of the Contract or the bonds, including, but not limited to, changes:

1. In the Plans and Specifications;
  2. In the method or manner of performance of the Work;
  3. In TRINITY METRO furnished facilities, equipment, Materials, services, or site; or
  4. Directing acceleration in the performance period for the Work.
- B. Contractor shall notify Trinity Metro in writing within three (3) days of when Contractor has received direction, instruction, interpretation or determination from any source which Contractor believes may cause a change in cost or time required for the performance of the Work. Such written notification shall state:
1. The date, circumstances, and source of the order, and
  2. That Contractor regards the order or action as a change. Such notice shall be given to Trinity Metro and Contractor must receive TRINITY METRO's written confirmation thereof before Contractor acts on said direction, instruction, interpretation or determination.
- C. Contractor may request additional time or additional compensation or both for Work through a change order.
- D. If Trinity Metro determines that any change under this Section causes an increase or decrease in Contractor's cost of, or the time required for, the performance of any of the Work under the Contract, Trinity Metro will make an equitable adjustment and modify the Contract by a written Change Order.
- E. For a change requested by Trinity Metro or Contractor, Contractor shall submit, within 14 days of the request, a detailed price and schedule Proposal supported with documentation that reflects all cost and time related impacts on the Contract. The Proposal shall include a complete breakdown of direct costs of both deletions and additions directly attributable to the proposed change in the Work, itemizing labor, Materials, equipment, and any other eligible direct costs.

Changed work shall be calculated as follows:

1. Calculation of Direct Costs
  - a. Material quantities by trades and unit costs. (Manufacturing burden associated with material fabrication performed will be considered to be part of the material costs of the fabricated item delivered to the job site.)
  - b. Labor breakdown by trades and unit costs identified with specific

items of material to be placed or operation to be performed.

- c. Construction equipment exclusively necessary for the change.
  - d. Costs of preparation and/or revision to shop drawings resulting from the change.
  - e. Employment taxes under FICA and FUTA.
  - f. Bond Costs – when size of change warrants revision.
2. Contractor is entitled to a mark-up of ten percent (10%) for overhead and five percent (5%) for profit on the Change Order amounts except Contractor is not entitled to five percent (5%) profit on the profit of any Subcontractor.
  3. Contractor shall submit with the Proposal its request for time extension, if any, and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the Contract in its entirety.
- F. Trinity Metro and Contractor shall negotiate a settlement of the time and cost related impacts of the change. A negotiated change order shall set out prices, scheduling requirements, time extensions and all costs of any nature arising out of the change. The execution of a change order by both parties will be deemed as accord and satisfaction of all claims of any nature arising from or relating to the change.
- G. Cost Reimbursable (Force Account) Work

In the event that Contractor and Trinity Metro are unable to agree on the amount of any adjustment to be made to the contract price or time, Trinity Metro may order Contractor to proceed with the performance of the Work in question pursuant to a unilateral change order issued by Trinity Metro. Such Work will, at Trinity Metro's option be paid for as cost reimbursable work. Contractor when so ordered shall proceed with the Work. When additional work is ordered by Trinity Metro to be performed on a cost reimbursable basis, Work so performed and accepted will be calculated in the following manner:

1. Direct Labor
  - a. For all labor engaged in the specific operation, Contractor will receive the actual wages paid on the Contract for each hour that the labor is actually engaged in work.

- b. The actual cost of the accident and unemployment compensation premiums, the actual cost of any health, welfare, pension, or collective bargaining agreement benefits paid, computed on the base rate for the class of work involved for the actual amount of the payroll.
  - c. No overtime premium will be paid, unless prior written authorization has been given by Trinity Metro, and then only the premium portion of the overtime will be paid, with no additional benefits or overhead.
- 2. Materials: For all Materials and prices approved by Trinity Metro prior to placement of any order and used in the specific work, Contractor will receive the actual cost of Materials, including freight charges, as shown by the original receipted bills for Materials and freight.
- 3. Contractor Owned or Leased Equipment: Payment for the use and operation of equipment owned or leased by Contractor will be made for all construction and automotive equipment required in the performance of the change. Such charges will not include charges for any item of equipment or tool with a new cost of five hundred dollars (\$500.00) or less each.
- 4. For equipment owned or leased by Contractor, the use and operation rates will be the actual cost to Contractor for the ownership of such equipment. Those rates will be applied as follows:
  - a. Use of the equipment will be computed and charged as follows: The monthly rental base rate for the equipment will be multiplied by the shift rate adjustment factor and the resulting product divided by 176 hours/month to yield the hourly rental rate.

$$\text{Hourly Use Rate} = \frac{\text{Monthly Rental Rate} \times \text{Shift Adjustment Factor}}{176 \text{ hours / month}}$$

- b. The hourly use rate for the equipment is multiplied times the actual number of hours the equipment is used in the conduct of the changed Work.
  - c. The application of regional adjustment factors is hereby excluded.
  - d. Normal working conditions will be assumed unless otherwise approved by Trinity Metro.

- e. Use of the equipment for second or third shifts will be at 50% of the first shift rate established above.
- f. Unless otherwise agreed, the costs of fuel, lubricants, tires, other expendables, repair parts, service and maintenance will be charged at the actual cost expended and utilized on the Project.
- g. No payment for transportation costs will be made if the equipment brought to the site for changed work is also used on Contract Work items.
- h. Equipment standby time, if approved by TRINITY METRO, will be paid for at twenty-five percent (25%) of the applicable rental rate.

#### 5. Outside Rental Equipment

If Contractor owned or leased equipment is not available and equipment is rented from an outside source, payment will be made on the basis of actual invoiced cost, less any discount allowed by the renting source. Use of outside rental equipment at rates higher than the actual cost of use of the equipment, will not be allowed unless approved in writing in advance by Trinity Metro.

#### H. Subcontract and Outside Special Services:

- 1. If TRINITY METRO and Contractor agree that a certain item of work or service under cost-reimbursable work cannot be adequately performed by Contractor's forces, such work or service may be performed by a Subcontractor or outside specialist. Where the cost reimbursable work necessitates fabrication or machining work by Contractor away from the Work Site, charges for such work may, by prior written agreement between TRINITY METRO and Contractor, be accepted as a specialist billing. Costs for work performed by Subcontractors will be computed in the same way as if Contractor did the work.
- 2. For the purposes of this Subparagraph, "Subcontractor billing amount" means the amount due under this Subparagraph to the Subcontractor that actually performed the work.
- 3. Percentage Allowances - Overhead and profit will be paid as shown under paragraph E.2., above.

#### I. Cost Reimbursable Invoices

- 1. Time charged to cost reimbursable work will be submitted daily to Trinity Metro for approval. Such time sheets will be submitted in duplicate by noon

- of the workday following the day on which the work was performed. One copy will be returned to Contractor; the other will be retained by Trinity Metro. Contractor will submit evidence of Trinity Metro's approval of time sheets with its invoice.
2. Invoices for cost reimbursable work will show in payroll form the dates, names, hours worked each day, rates of pay, and amounts paid for each individual employed on such work, and include, in detail, the nature of the work performed by each employee.
  3. Invoices for Materials shall be fully itemized showing dates of delivery, quantities, unit prices, amounts, and discounts, and must be accompanied by vendor invoices covering each item.
  4. Invoices for equipment rental must be fully itemized showing a complete description including size and capacity of equipment, the number of hours operated each day, the rental rates and amounts for each individual piece of equipment used on such work, and any discount allowed.
  5. All invoices, payrolls, and other forms of requests for payment on cost reimbursable work will be submitted in duplicate with the progress payment request. Payment request will state the Contract number and the cost reimbursable work order or change order number under which the work was performed.
  6. Failure to present requests in proper form within 60 days after the close of the month in which the cost reimbursable work was performed will constitute a waiver by Contractor of its right to present such claim thereafter or to receive payment therefore.
- H. Contractor shall proceed with work ordered under this Section in a timely manner so as to avoid delay and minimize any increase in time required for performance of the work but, in no event, shall Contractor proceed with such Work without a fully executed change order or written order from TRINITY METRO to so proceed. An inadvertent payment made by TRINITY METRO for work not specifically authorized in writing by TRINITY METRO shall not be evidence or acknowledgment of TRINITY METRO's liability.
- I. Except as provided in this Section, no order, statement, or conduct of TRINITY METRO shall be treated as a change under this Section or entitle Contractor to an equitable adjustment.
- J. No Proposal by Contractor for equitable adjustment shall be allowed if asserted after final payment under the Contract.
- K. In no event will Contractor be entitled to compensation for loss of anticipated profits or for consequential damages, resulting from changes.

- L. In addition to TRINITY METRO, Contractor shall sign the change order documents to verify the terms and conditions established by the change order; however, failure or refusal of Contractor to sign a change order will not relieve Contractor of its obligation to execute the proposed changes in accordance with this item and the other terms and provisions of the Contract. Each change order shall be specific and final as to prices and the extension of time, if any, and no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and compensated in the change order.

**602 Minor Adjustments in the Plans and Quantities**

- A. Contractor is responsible for completing the Work in accordance with the Plans and Specifications including all necessary quantities of Materials and work.
- B. TRINITY METRO reserves the right to make minor adjustments in construction details shown on the Plans or required by the Specifications when:
  - 1. The character of the work performed is the same or substantially the same as other Work required under the Contract; or
  - 2. There is no difference in the quantity of Work required; or the difference in the estimated quantity of Work required does not exceed plus or minus 15% of the original Contract quantity and the net total of all adjustments does not exceed plus or minus 15% of the original Contract quantity.
- C. Compensation for minor adjustments in the Plans or Specifications made in accordance with this Section will be made by adjusting the pay quantity of the appropriate pay item or previously priced item for the actual increase or decrease in quantity attributable to the adjustment.
- D. An adjustment as described in this Section will be directed by change order and will provide an estimate of the magnitude of the adjustment and the proposed method of compensation.

**603 Value Engineering Change Proposals**

- A. Trinity Metro encourages Contractor to submit Value Engineering Change Proposals (VECP) in order to avail Trinity Metro of potential cost savings. Contractor and Trinity Metro will share any savings in accordance with this Section. Contractor is encouraged to submit VECPs whenever it identifies potential savings or improvements.
- B. This paragraph applies to a Contractor-developed and documented VECP which:

1. Requires a change to this Contract to implement the VECP; and
  2. Reduces the Contract amount without impairing essential functions or characteristics of the Work, provided that it is not based solely upon a change in specified quantities.
- C. Contractor shall submit VECPs directly to Trinity Metro. As a minimum, the following information shall be submitted by Contractor with each VECP:
1. Description of the existing Contract requirements, which are involved in the proposed change;
  2. Description of the proposed change;
  3. Discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item;
  4. Itemization of the Contract requirements, which must be changed if the VECP is accepted (e.g., drawing numbers and specifications);
  5. Justification for changes in function or characteristics of each affected item, and effect of the change on the performance of the end item;
  6. Effect of proposed change on life-cycle costs, including operation, maintenance, replacement costs, and life expectancy;
  7. Date or time by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on Contract completion time or delivery schedule; and
  8. Cost estimate for existing Contract requirements correlated to Contractor's unit price or lump sum breakdown and the proposed changes in those requirements. Costs of development and implementation by Contractor shall be provided. Additional costs to Trinity Metro (e.g., costs of testing, redesign, and effect on other contracts) shall also be estimated.
- D. Trinity Metro retains the right to reject a VECP without review, without recourse by the Contractor, if a similar change is already under review, or if, in Trinity Metro's sole opinion, the potential savings are unlikely to justify the cost of the review, or if the proposed change is otherwise unacceptable to Trinity Metro.
- E. Trinity Metro will expeditiously process proposals accepted for review but shall not be liable for any delay in acting upon any proposal submitted pursuant to this



Section. Trinity Metro may accept, in whole or in part, by Change Order, any VECP submitted pursuant to this Section. Until a Change Order is issued on a VECP, Contractor shall remain obligated to perform in accordance with the original Contract. Trinity Metro's decision as to acceptance or rejection of any VECP shall be at Trinity Metro's sole discretion and shall be final and not subject to review by disputes process or otherwise.

- F. If a VECP submitted by Contractor pursuant to this Paragraph is accepted, the Contract price shall be adjusted in accordance with the following provisions:
1. Definitions
    - a. Estimated gross savings to Contractor (GS) means the difference between the cost of performing the work according to the existing requirement and the cost to perform it according to the proposed change. In each instance, Contractor's profit shall not be considered part of the cost.
    - b. Contractor cost (CC) means reasonable costs incurred by Contractor in preparing the VECP and making the change, such as cancellation or restocking charges.
    - c. Estimated net savings to Contractor (NS) means gross savings (GS) less Contractor costs (CC).
    - d. Trinity Metro's Costs (TC) means reasonable costs incurred by Trinity Metro in evaluating and implementing the VECP, such as testing, redesign, and effect on other contracts.
  2. Calculations: The Contract amount shall be reduced by an amount equal to 50% of (NS) plus 50% of (TC), expressed by the formula  $\text{Reduction} = 0.5 (\text{NS}) + 0.5 (\text{TC})$
  3. Contractor's profit shall not be reduced by application of the VECP.
- G. Contractor shall include appropriate value engineering incentive provisions in all subcontracts of \$25,000.00 or greater. In determining Net Savings for cost reduction proposals, which involve a subcontractor, only actual costs to Contractor and Subcontractor as defined in Paragraph 'F' will be allowed as a Contractor Cost. Incentive payments made to the Subcontractor by Contractor in connection with the cost reduction proposal will not be allowed in determining Net Savings.
- H. Restrictions. Contractor may restrict the Trinity Metro's right to use VECP data by marking it with the following statement: "This data furnished to the Value

Engineering Article of the Contract, shall not be duplicated, used or disclosed in whole or in part, for any purpose except to evaluate the VECP, unless the proposal is accepted by Trinity Metro. The restriction does not limit Trinity Metro's right to use information contained in this data if it is or has been obtained, or is otherwise available, from Contractor or from another source, without limitations. When this proposal is accepted by Trinity Metro, Trinity Metro shall have the right to duplicate, use, and disclose any data in any manner, and for any purpose whatsoever, and may allow others to do so whether under this or any other Contract."

- I. The compensation provisions of this Section constitute Contractor's exclusive and complete compensation for Trinity Metro's use of the VECP and Contractor shall have no right to additional compensation for future or additional uses of the VECP. Trinity Metro shall have an absolute and unrestricted right to use the VECP for any purpose other than on the Contract or contracts for which it was submitted.

#### **604 Alternative Methods of Construction**

Whenever the Plans or Specifications provide that more than one specified method of construction or more than one specified type of material or construction equipment may be used to perform portions of the Work and leave the selection of the method of construction or the type of material or equipment to be used up to Contractor, it is understood that Trinity Metro does not guarantee that every such method of construction or the type of material or equipment can be used successfully throughout all or any part of the Work. It shall be Contractor's responsibility to select and use the alternative or alternatives, which will satisfactorily perform the Work under the conditions encountered. In the event some of the alternatives are not feasible or it is necessary to use more than one of the alternatives in the Work, full compensation for any additional cost involved shall be considered as included in the Contract price paid for the item of Work involved and no additional compensation will be allowed thereafter.

#### **605 Quality Control and Compliance with Contract Requirements**

- A. Materials furnished and Work performed by Contractor shall conform to details shown on the Plans and Specifications, and requirements given in the Contract.
- B. Contractor has primary responsibility for inspection and testing of all Materials required in the performance of the Contract. The foregoing provision notwithstanding, Trinity Metro may perform check testing and periodic inspections at its cost to verify adequacy of Contractor quality control or for any other purpose. Trinity Metro reserves the right to reject Work and Materials on the basis of any instituted inspection and testing.
- C. Materials furnished or work performed, which does not comply with Contract

requirements, will be considered non-conforming. Non-conforming work includes, but is not limited to:

1. Work done or products incorporated beyond lines shown on the Plans and Specifications or as established by Trinity Metro;
2. Work done or products incorporated contrary to Trinity Metro's instructions;
3. Work changed or added without Trinity Metro's written authorization;
4. Work, which includes incorporation of unapproved substitutions or unapproved Materials;
5. Work performed or Materials furnished without the equipped testing, inspection or other conformance documentation or without required warranties; and
6. Work or Materials not in conformance with the Contract requirements.

D. When non-conforming Work is discovered, Trinity Metro may:

1. Reject the Materials or Work or require its correction. Contractor shall satisfactorily correct rejected Work or satisfactorily replace rejected Materials at Contractor's own expense and promptly segregate and remove rejected Materials from the work site and properly dispose of them. If Contractor fails to promptly replace rejected Materials or correct rejected Work, Trinity Metro may, by Contract or otherwise, remove and replace such rejected Materials or Work, correct such Materials or workmanship, and dispose of all rejected Materials and Work so removed, charging the cost thereof to Contractor, or Trinity Metro may terminate Contractor's right to proceed in accordance with the Termination for Default provision in the Contract. Contractor and its sureties shall be liable for any costs and damages occasioned thereby; or
2. Accept the Materials or Work as suitable for the intended purpose, document the basis of such acceptance, and deduct an equitable amount from the Contract price for uncorrected Work.

#### **606 Warranty of Work**

- A. Contractor warrants that the Work, and any portion thereof performed pursuant to the Contract, shall be of the quality specified, or of the best grade if no quality is specified, and shall conform to the Plans, Specifications, Samples, and other descriptions set forth in the Contract. Unless otherwise provided in the Contract,

Contractor warrants all Materials furnished by Contractor and its Subcontractors, and all Work performed by Contractor and its Subcontractors to be free of defects and faults for a period of one (1) year from the date of Final Acceptance of the Work by Trinity Metro. Contractor's warranty shall apply regardless of any lesser period of warranty provided by the manufacturer of Materials furnished by Contractor. The warranty on any repair, rework or replacement as a result of a warranty claim or damage shall be one year from the acceptance of the repairs, rework or replacement.

- B. Upon receipt of written notice from Trinity Metro of a breach of warranty during the applicable warranty period, Contractor shall redesign, repair or replace any defect or deficiency in the Work in a manner satisfactory, and shall perform such tests as Trinity Metro may require to verify that such redesign, repair or replacement complies with the requirements of the Contract. Contractor warrants the redesigned, repaired or replaced work for a period of one (1) year from the date of Final Acceptance of the Work. All costs incidental to redesign, repair or replacement, and testing, including the removal, replacement, and reinstallation of equipment necessary to gain access and all other costs incurred as a result of a breach of warranty shall be borne by Contractor and Contractor's surety.
- C. If Contractor, within 10 days after receiving Trinity Metro's written notice of a breach of warranty, fails to proceed to comply with the terms of this Section in a timely manner, Trinity Metro may have the defects corrected, and Contractor shall be liable for all costs incurred, provided that in case of an emergency where, in the opinion of Trinity Metro delay would cause serious safety risks, loss or damage, repairs may be made without notice to Contractor, and Contractor shall immediately pay the cost of the repairs.
- D. During the warranty period, Contractor shall be liable for all damage or disturbance to property and other improvements under, above, within, or adjacent to the Work, caused in whole or in part by activities of Contractor in performing its duties and obligations under the Contract.
- E. With respect to all warranties, express or implied, from Subcontractors, manufacturers, or Suppliers for work performed and Materials furnished under the Contract, Contractor shall:
  - 1. Obtain all warranties that would be given in normal commercial practices;
  - 2. Require all warranties to be executed in writing, for the benefit of Trinity Metro;
  - 3. Register all manufacturer and Supplier warranties in Trinity Metro's name; and
  - 4. Enforce all warranties for the benefit of Trinity Metro.

- F. Any warranty from a Subcontractor, manufacturer or Supplier to Contractor exceeding any period required by the Contract shall be extended to Trinity Metro for the same period of time as given to Contractor.
- G. The above warranties are not intended as a limitation but are in addition to all other express warranties set forth in the Contract and such other warranties either express or implied by law, custom or usage of trade.
- H. This warranty shall not limit Trinity Metro's rights under the Contract with respect to the latent defects, gross mistakes, or fraud.

**607 Uncovering and Correction of Work**

- A. If a portion of the Work is covered contrary to Trinity Metro's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by Trinity Metro, be uncovered for Trinity Metro's examination and be replaced at Contractor's expense without change in the contract time.
- B. If a portion of the Work has been covered that Trinity Metro has not specifically requested to examine prior to its being covered, Trinity Metro may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at Trinity Metro's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at Contractor's expense unless the condition was caused by Trinity Metro or an Other Contractor in which event Trinity Metro shall be responsible for payment of such costs.
- C. Contractor shall promptly correct Work rejected by Trinity Metro for failing to conform to the requirements of the Contract Documents and applicable law, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for Trinity Metro's services and expenses made necessary thereby, shall be at Contractor's expense.
- D. If, within one (1) year after the date of Final Acceptance of the Work or designated portion thereof or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall, at its own expense, correct it promptly, after receipt of written notice from Trinity Metro to do so, commence all required corrective work within forty-eight (48) hours (excluding

Saturdays and Sundays) for all critical items and within five (5) business days for all non-critical items and shall work diligently until all corrective work is completed, unless Trinity Metro has previously given Contractor a written waiver specifying such non-compliance. If Contractor fails to correct nonconforming Work within a reasonable time during such periods or if Contractor commences such corrective work but does not pursue it in an expeditious manner after receipt of notice, Trinity Metro may correct it, and charge the costs thereof to Contractor.

- E. The one (1) year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Final Completion and the actual completion of that portion of the Work. The one (1) year period for correction of Work shall not be extended by corrective Work performed by Contractor, so long as such correction is done in a good and workmanlike manner, and corrects the nonconformance.
- F. Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Trinity Metro. Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of Trinity Metro or Other Contractors caused by Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.
- G. Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one (1) year period for correction of Work as described in this Section relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.
- H. If during the guarantee or warranty period, any material, equipment or system requires corrective work because of defects in Materials or workmanship, Contractor shall commence all required corrective work within forty-eight (48) hours (excluding Saturdays and Sundays) after receiving the notice and work diligently until corrective work is completed. If Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective work within forty-eight (48) hours (excluding Saturdays and Sundays) or if Contractor commences such work but does not pursue it in a diligent and expeditious manner, Trinity Metro may either notify the bonding company (if any) to have such work and/or obligations performed at no additional cost to Trinity Metro or may perform such work and/or obligations and charge the costs

thereof to Contractor. Contractor shall correct any defects noted by Trinity Metro. The obligations of Contractor or any Subcontractor or Sub-subcontractor under the terms and provisions of the Contract Documents shall not be limited to the payments made by the surety (if any) under the provisions of the Contract.

#### **701 Payment**

- A. Invoices are to be submitted once a month by Contractor to Trinity Metro and shall conform to policies and regulations adopted from time to time by Trinity Metro. The invoices shall contain, at a minimum, the following information: (i) the contract number; (ii) documentation that the amounts invoiced agree with the progress claimed in the approved baseline schedule; (iii) the costs of the Work performed during this period, as referenced in the Job Cost Report, plus a percentage of Contractor's fixed fee proportional to the amount of Work completed within the payment period; (iv) Certified Payrolls; (v) a DBE payment report showing name of DBE firm, amount paid and DBE percentage utilization as of current payroll; and (vi) any other information necessary to demonstrate the entitlement to payment under the terms of the Contract. Failure to provide the above information may result in rejection and return of the invoice for resubmission with complete data.
- B. Contractor shall prepare a monthly Job Cost Report reflecting the cost of all work performed and Materials provided on the Project through the date of the current billing cycle. Such Job Cost Report shall contain the following information: costs of Materials, costs of labor and labor burden, costs of equipment, costs of Subcontractors, costs of fuel and other expendables, and other direct costs. The costs contained in the Job Cost Report shall be tracked in accordance with Generally Accepted Accounting Principles. The Job Cost Report shall be prepared in a form acceptable to Trinity Metro.
- C. Trinity Metro will pay to Contractor, at the times and in the manner hereinafter provided, the amount of the cost of the Work plus the agreed fixed fee, not to exceed the Contract Price for the Work satisfactorily performed, contingent upon Contractor's satisfactory compliance with the terms and conditions of the Contract. Contractor agrees to accept that amount as full and final payment for all labor, Materials, supplies, equipment, overhead, profit, taxes, duties, and charges of whatever nature incurred by Contractor in performing its obligations under the Contract.
- D. Trinity Metro will pay the approved invoice, less retainage within 30 days after its receipt by Trinity Metro. All retainage will be held by Trinity Metro until the time for final payment and Trinity Metro has received Consent of Surety. Trinity Metro retains the right and has the discretion to reduce the retainage withheld and change the period within which it is held.

- E. Concurrently with the submission of each request for a progress payment under the Contract, Contractor shall certify that all due and payable bills with respect to the Work either have been paid or will be paid with the proceeds of its current request for payment.
- F. Contractor agrees to pay each Subcontractor for satisfactory performance of its subcontract no later than seven (7) calendar days from receipt of each payment Contractor receives from Trinity Metro.
- G. All Materials and work covered by progress payments shall, at the time of payment, become the sole property of Trinity Metro, but this shall not be construed as relieving Contractor from the sole responsibility for all Materials and work upon which payments have been made or for the restoration of any damaged work, Materials, or waiving the right of Trinity Metro to require fulfillment of all terms of the Contract.

**702 Retainage**

The retainage percentage for this contract will be 5%.

**703 Withholding of Payments by Trinity Metro**

Trinity Metro may withhold all or part of a payment to the extent deemed necessary to protect Trinity Metro from loss because of:

- A. Defective work or work not performed in accordance with the Contract which is not remedied;
- B. Third party claims filed, or evidence reasonably indicating that a third party claim will be filed;
- C. If, after completion of the Work, the U.S. Government receives written notice from the surety regarding Contractor's failure to meet its obligation to its Subcontractors;
- D. Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Price;
- E. Damage to Trinity Metro or another contractor arising out of, caused by, or resulting from, the performance of or failure to perform the Work hereunder by Contractor;
- F. Contractor's failure to carry out the Work in accordance with the Contract;



- G. Contractor's failure to comply with any material provision or requirement of the Contract;
- H. Contractor's failure to pay the deductible portion of any insured claim filed by third-parties against Contractor;
- I. Contractor's failure to provide the required progress schedules and record drawings in accordance with the Contract;
- J. Any sums expended by Trinity Metro in performing any of Contractor's work under the Contract which Contractor has failed to perform; and
- K. Liquidated damages.

**704 Liens Prohibited**

Contractor shall not permit any lien or claim to be filed or prosecuted against Trinity Metro, its property, or its right-of-way on account of any labor or material furnished or any other reason for work arising out of the Contract. If any lien shall be filed, Contractor shall satisfy and discharge or cause such lien to be satisfied and discharged immediately.

**705 Taxes**

The Project to be constructed pursuant to the Contract is for new construction as defined in Texas Comptroller Rule 3.291, and the Contract shall be a separated contract for purposes of Texas Comptroller Rule 3.291. Contractor shall itemize separate charges for labor and Materials to Trinity Metro not to exceed the Purchase Price under the Contract. Contractor shall purchase all Performance Items (as defined at the end of this Section) free of Texas sales and use tax, for resale, under its valid Texas sales tax permit, and it shall not pass, and Trinity Metro shall not be responsible for, any sales or use tax cost or expense as part of the Purchase Price, Contractor's overhead and profit, or otherwise. Trinity Metro shall provide a Texas exemption certificate to Contractor, and Contractor shall not charge Texas sales tax to Trinity Metro on any of the Performance Items. In similar fashion, Contractor shall require its Subcontractors to enter into separated subcontracts under Texas Comptroller Rule 3.291 and contractually require the Subcontractors to purchase all Performance Items tax-free for resale. Such Subcontractors shall not pass on any sales or use tax cost or expense to Contractor or Trinity Metro. As used in this Section the term "Performance Items" shall mean tangible personal property that is incorporated into the realty; consumable items that are necessary and essential to the Contract and are completely consumed at the job site; and taxable services that are performed at the job site, and: (i) are expressly required by the Contract to be provided or purchased by Contractor; or (ii) are integral to the performance of the Contract. Contractor shall pay and bear the full economic responsibility for any applicable federal or state taxes imposed on its operations or performance under the Contract.

**706 Certified Current Cost or Pricing Data**

- A. Contractor and all affected Subcontractors will submit, in addition to the other information required to be submitted under, Changes in the Work, a certificate of current cost or pricing data if the aggregate increases and/or decreases in costs, plus applicable profits, of any modifications to the Contract exceeds \$500,000 or before awarding any subcontract expected to exceed \$500,000, except if the price is:
1. Based on unit prices or lump sum prices established in the Contract;
  2. Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
  3. Set by law or regulation.
- B. The certificate(s) will be submitted as soon as possible after agreement is reached on the Contract price adjustment. The certificate will be in the following form:

**CERTIFICATE OF CURRENT COST OR PRICING DATA**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to TRINITY METRO or to TRINITY METRO's representative in support of \* are accurate, complete, and current as of \* \*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing date agreements between the Proposer and TRINITY METRO that are part of the Proposal.

Firm  
Name  
Title  
Date of execution\*\*\*

\* Identify the Proposal, quotation, change order, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., C.O. No.).

\*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

\*\*\* Insert the day, month, and year of signing, which should be as close as practical to the date when the price negotiations were concluded and the contract price was agreed to.

- C. Although the certificate pertains to "cost or pricing data," it is not to be construed as a representation as to the accuracy of Contractor's judgment on the estimated portion of future costs or projection. It does, however, constitute a

representation as to the accuracy of the data upon which Contractor's judgment is based. A Certificate of Current Cost or Pricing Data will not substitute for examination and analysis of Contractor's Proposal.

- D. The exercise of an option at the price established in the initial negotiation in which certified cost or pricing was used does not require rectification or further submission of data.
- E. If the value of a Subcontractor's portion of the change order is less than \$100,000, the Subcontractor will not be required to submit a certificate.

**707 Price Reduction for Defective Cost or Pricing Data**

- A. If any price, including profit, negotiated in connection with any modification of the Contract to which Certified Current Cost or Pricing Data applies was increased by a significant amount because Contractor or Subcontractor or proposed Subcontractor furnished cost or pricing data that was not complete, the price will be reduced accordingly and the Contract will be modified to reflect the reduction.
- B. Any reduction in the Contract price under Paragraph A above due to defective data from a prospective Subcontractor that was not subsequently awarded the subcontract will be limited to the amount, plus an applicable overhead and profit markup, of the:
  - 1. The actual subcontract; or
  - 2. The actual cost to Contractor, if there was no subcontract; was less than the prospective subcontract cost estimate submitted by Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- C. If TRINITY METRO determines that a price or cost reduction should be made, Contractor agrees not to raise the following matters as a defense:
  - 1. Contractor or Subcontractor was a sole source Supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;
  - 2. Trinity Metro should have known that the cost or pricing data in issue were defective even though Contractor or Subcontractor took no affirmative action to bring the character of the data to the attention of Trinity Metro;
  - 3. The Contract was based on the agreement about the total cost of the

Contract and there was no agreement about the cost of each item procured under the Contract; or

4. Contractor or Subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- D. An offset in an amount determined appropriate by Trinity Metro based upon the facts will be allowed against the amount of a Contract price reduction if:
1. Contractor certifies that, to the best of Contractor's knowledge and belief, Contractor is entitled to the offset in the amount requested; and
  2. Contractor proves that the cost or pricing data were available before the date of agreement on the price of the Contract (or price of the modification) and that the data were not submitted before such date.
- E. An offset will not be allowed if:
1. The understated data was known by Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
  2. Trinity Metro proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- F. If any reduction in the Contract price under this Section reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, Contractor will be liable to Trinity Metro for such overpayment. Contractor will pay Trinity Metro at the time such overpayment is repaid simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to Contractor to the date Trinity Metro is repaid by Contractor at the rate established by the Treasury under 60 U.S.L. App. 121 5 (b)(2).

#### **801 Substantial Completion**

- A. When Contractor considers the Work to be Substantially Completed, Contractor will notify Trinity Metro in writing that it believes it has achieved Substantial Completion with respect to all or, if permitted by the Special Provisions, specified parts of the Work. Upon receipt of Contractor's notice of Substantial Completion, Trinity Metro will inspect the Work and determine whether Substantial Completion has been achieved. Within thirty (30) days after receiving Contractor's Substantial Completion, Trinity Metro will provide notice as to whether Substantial Completion has been achieved. If Substantial Completion has been achieved as to such Work, Trinity Metro will either accept the Work, in writing, as Substantially Complete or notify Contractor, in writing, of Work yet to

be performed under the Contract to achieve Substantial Completion. In any event, Trinity Metro will prepare and deliver to Contractor a written list of punchlist items to be completed or corrected.

- B. When Contractor has completed all Work, corrected any deficiencies in the Work and any Work rejected by Trinity Metro and has submitted all required Project records, documentation and reports, Contractor shall notify Trinity Metro in writing that Contractor considers the Work to have reached Final Completion and ready for final inspection for Final Acceptance.

**802 Final Completion, Final Acceptance and Final Payment**

- A. Following Trinity Metro's written statement of Substantial Completion, Contractor will send written notice to Trinity Metro informing Trinity Metro of the point in time at which Contractor has achieved Final Completion. Trinity Metro will then review the Work to determine whether Final Completion has been achieved and whether Final Acceptance is appropriate. Upon receipt of Trinity Metro's written Final Acceptance of the Work, Contractor will invoice Trinity Metro for any amounts due under the Contract including retainage.
- B. Neither the final payment nor any remaining retained percentage will become due until Contractor submits to Trinity Metro:
  - 1. An affidavit that all payrolls, bills for Materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied,
  - 2. Consent of Surety to final payment,
  - 3. As-built drawings and warranty information, and
  - 4. If required by Trinity Metro, other data establishing payment or satisfaction of all obligations, such as receipts, releases, and waivers of liens arising out of the Contract, to the extent and in the form designated by Trinity Metro.
- C. If the remaining balance of Work is less than the retainage stipulated in the Contract, and if bonds have been furnished as provided in the Contract, the written consent of the surety to the payment of the balance due for that portion of the Work eligible for Final Completion will be submitted by Contractor prior to payment.
- D. Acceptance of final payment by Contractor, a Subcontractor, or a material Supplier will constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of

application for final payment. Such waivers will be in addition to the waiver provided in this Section.

**803 Time of Completion**

Time is of the essence in the performance of the Contract. Contractor shall proceed with performance of the Work under the Contract upon the effective date of the Notice to Proceed, and shall continuously and diligently prosecute the Work and specified portions thereof to completion on or before the time or times set forth in the Contract. Contractor shall not commence work until it receives the Notice to Proceed, except as otherwise required by the Contract which includes an allowance for the normal number of days in which Contract Work may be partially or totally delayed because of weather during the season and at the location the Contract will be performed, and that Contractor will not be entitled to excusable delays or compensation for such delays.

**804 Project Schedule, Delays and Extensions of Time**

- A. The Scope of Work, attached to the Special Provisions, defines the requirements for the Project Construction Schedule and its updates, which are contract deliverables. The Construction Schedule shall be cost and resource loaded as specified.
- B. Contractor shall be granted an extension of time for any delay on the critical path to completion of the Work, based on the latest approved Contract Schedule, arising from acts of God, acts of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, earthquake, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or wrongful acts of owners or occupants of property adjoining the Work Site, provided that:
  - 1. The aforesaid causes were not foreseeable and did not result from the fault or negligence of Contractor and otherwise mitigate the impact of such events;
  - 2. That Contractor has taken reasonable precautions to prevent further delays owing to such causes; and
  - 3. Contractor has notified Trinity Metro in writing of the cause or causes of delay within 24 hours from the beginning of any such delay. Such delay shall not be the basis for a claim for additional compensation. For the purposes of this Section, weather conditions shall not be deemed unusually severe if they fall within two standard deviations from the mean of data for the period of delay recorded by the National Oceanographic and Atmospheric Administration (NOAA) for the Dallas/Fort Worth metropolitan area over the past 10 years.

- C. Upon receipt of Notice to Proceed and continuing through Final Completion of the Work, Contractor shall record and submit a report to Contractor on a daily basis substantiating when it considers itself to have suffered any actual lost day due to weather conditions or other excusable delay whether the actual lost days result in a time extension or not. Contractor's submission of such daily report for each time it claims a weather related delay on the day after any alleged weather delay will be a condition precedent to Contractor being able to claim that day as actual lost time. Contractor shall also submit to Trinity Metro, on a monthly basis, an account of actual days lost due to weather conditions for that month and a running total for the Contract performance period, together with its schedule assumptions regarding weather. Contractor and Trinity Metro shall attempt to agree on a monthly basis on the number of actual days lost for that month.
- D. Notwithstanding any other provisions of the Contract, the time extensions for changes in the Work will depend upon the extent, if any, by which the changes cause delay in the completion of the various critical path elements of construction. The Contract modification granting the time extension may provide that the Contract completion date will be extended only for those specific critical path elements so delayed and that the remaining Contract completion dates for all other portions of the Work will not be altered.
- E. If Contractor is delayed in the progress of the Work by an act, omission, or neglect of Trinity Metro, its agents or representatives, or an act or omission of another contractor of Trinity Metro other than Contractor and its Subcontractors and Suppliers of any tier in the performance of a contract with Trinity Metro, Contractor shall, within 24 hours after the commencement of such delay, file with Trinity Metro a written notice of delay together with a request for an extension of the Contract period for the portion of the Work so delayed. The notice shall set forth in detail the reasons for the delay, and the period for which an extension is requested. Contractor may submit a revised request for an extension of time within 14 working days following the cessation of such delay.
- F. When such a request is received, Trinity Metro will ascertain the reasons for and extent of such delay. If Trinity Metro determines that the cause was beyond the control and without the fault or negligence of Contractor and the facts justify an extension of time, or additional compensation, or both, the Contract will be modified accordingly, in writing, by a Change Order. The findings of Trinity Metro shall be conclusive and binding upon the parties. Should Contractor wish to contest such findings, it is permitted to do so pursuant to the procedures contained within the Contract.
- G. Unless the above notice and appropriate requests are filed with Trinity Metro pursuant to this Section within 24 hours after commencement of the delay, or such other times as may be prescribed herein, no extension of time will be made

or additional compensation allowed. The written notices in this Section are condition precedents to obtaining time extensions or additional compensation, or both, sought pursuant to this Section. In the case of a continuing cause of delay, only one request is necessary.

- H. If Trinity Metro determines that the facts do not justify an extension of time or additional compensation, such request will be denied. Trinity Metro’s findings of fact for either determination will be delivered to Contractor in writing. Contractor agrees that any extension of time and/or additional compensation granted under this Section should be its sole and exclusive remedy for the consequences of any delay described above.
- I. Unusually severe weather delays shall apply only if they affect particular portions of the Work and operations of Contractor, as determined by Trinity Metro. The effects of weather less severe than the norm based on the criteria stated in Paragraph A, may be taken into account in granting time extensions.
- J. Contractor shall consider and include seasonal weather conditions in the planning and scheduling of all Work, specifically including all Work influenced by high and low ambient temperatures, precipitation, and/or saturated soil, to ensure completion of all Work within the Contract time. Contract time extensions for abnormal weather will be granted only to the extent that the actual days lost during the Contract performance period exceeds the annual cumulative average lost days for the Contract performance period as determined by the average lost days listed below, which Contractor represents have been included in its schedule, included in its Bid, and in the Contract Price. The values listed below are based on the average historical seasonal weather or climate conditions for the preceding ten (10) years in the area as prepared by the NOAA, but in any event, the values listed below shall control the Contract. Average lost days for any month that is only partially included in the Contract performance period will be calculated by pro-rating the average lost days for that month shown below by the ratio of the number of days in the Contract performance period to the total number of days in the month. Contractor further acknowledges that time is of the essence and will attempt to avoid weather related delays.

Average Lost Time per Month (calendar days)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
8	6	6	6	6	4	4	4	4	4	5	6

- K. Actual lost days due to weather conditions occur only when weather conditions prevent Contractor from performing Work items critical to the timely completion of the Project for more than 50% of a scheduled workday. Items critical to timely completion are those on the critical path in the approved baseline schedule (or approved revised baseline schedule as appropriate). If Contractor does not have an approved baseline schedule at the time a weather condition occurs,



Contractor may not be entitled to include the days lost due to that weather condition in the calculation of actual days lost for the Project. Contractor's sole remedy for lost days due to weather conditions shall be an extension of time. Time extensions grant for weather conditions are not compensable and do not entitle Contractor to damages or an equitable adjustment

- L. An extension of time will not be granted for a delay caused by a shortage of labor or Materials, except Trinity Metro-furnished Materials, unless Contractor furnishes to Trinity Metro documented proof that it has made every effort to obtain such Materials from every known source within reasonable reach of the Work. There shall be no increase in compensation due Contractor for any increase in the cost of labor or Material.

Contractor shall also submit proof, in the form of network analysis data, that the inability to obtain such Material when originally planned, did in fact cause a delay in completion of any Contract milestone which could not be compensated for by revising the sequence of operations. Only the physical shortage of Material will be considered under these provisions as a cause for extension of time.

No consideration will be given to any claim that Material could not be obtained at a reasonable, practical, or economical cost unless it is shown to the satisfaction of Trinity Metro that such Material could have been obtained only at exorbitant prices, entirely inconsistent with current rates, taking into account the quantities involved and the usual practices in obtaining such quantities that such fact could not have been known or anticipated at the time the Contract was entered into.

- M. No extension of time will be granted under this Section for any delay to the extent:
1. That performance would have been delayed by any Contractor-induced causes, including, but not limited to, the fault or negligence of Contractor or its Subcontractors; or
  2. For which remedies are provided or excluded by any other provision of the Contract. Only the actual delay necessarily resulting from the causes specified in this Section shall be grounds for extension of time. In case Contractor is delayed at any time or for any period by two or more of the causes specified in this Section, Contractor shall not be entitled to a separate extension for each one of the causes only one period of extension will be granted for the delay.
- N. An extension of time granted shall not release Contractor's surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and said Contract shall be and shall remain in full force and effect during the continuance and until the Final Completion and Final

Acceptance of the Work covered by the Contract unless terminated in accordance with the terms of the Contract. Permitting Contractor to finish the Work or any part thereof after the time fixed for completion or after the date to which the time for completion may have been extended or the making of payments to Contractor after any such periods shall not constitute a waiver on the part of Trinity Metro or any rights under the Contract.

- O. Neither the granting of an extension of time beyond the date fixed for the completion of any part of the Work, nor the performance and acceptance of any part of the Work or Materials specified by the Contract after the time specified for the completion of the Work, shall be deemed to be a waiver by Trinity Metro of Trinity Metro's right to abrogate the Contract for abandonment or failure to complete within the time specified or to impose and deduct damages as may be provided.

**805 Not used**

**806 No Damages for Delays**

Unless otherwise specifically provided for by the Contract, Contractor shall not be entitled to damages of any type resulting from hindrances, delays, or any other cause under the Contract except when the Work is stopped or suspended by a written order by Trinity Metro or by intentional interference by Trinity Metro which is not permitted under the Contract.

**807 Use of Completed Portions of the Work**

- A. Whenever, as determined by Trinity Metro, any portion of the Work performed by Contractor is in a condition suitable for use, and the best interests of Trinity Metro requires such use Trinity Metro may take possession of or use such portion of the Work. Such use by Trinity Metro shall in no case be construed as Final Acceptance, and shall neither relieve Contractor of any of its responsibilities under the Contract, nor act as a waiver by Trinity Metro of any of the conditions thereof. Contractor shall not be liable for the cost of repairs, rework, or renewals, which may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of the Work, Contractor shall notify Trinity Metro in writing as required by the Contract and shall be entitled to such additional compensation or extension of time, or both, as determined in accordance with the Contract.
- B. If in the course of such use, the Work proves to not be in compliance with the Contract, Trinity Metro shall have the right to continue such use until such portion of the Work can, without injury to Trinity Metro, be taken out of service for

correction of defects, errors, omissions, or replacement of unsatisfactory Materials, as necessary for such portions of the Work to comply with the Contract. Contractor shall correct the Work as soon as practical, but not later than one (1) month after notification by Trinity Metro.

- C. Contractor shall not use any permanently incorporated Materials unless such use is approved in writing by Trinity Metro. Where Contractor's request is granted for the use of certain Materials, Contractor shall properly use and maintain and, upon completion of its use and at its own expense, recondition such Materials to the satisfaction of Trinity Metro.

**808 Suspension of Work**

- A. Trinity Metro may order Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work of the Contract for a period of time that Trinity Metro determines appropriate for its own convenience.
- B. If the performance of all or part of the Work is suspended, delayed, or interrupted for an unreasonable period of time:
  - (1) by an act of Trinity Metro in the administration of the Contract, if not attributable to action, inaction's, or defaults of the Contract or its Subcontractors or Suppliers of any tier; or
  - (2) by Trinity Metro's failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), then an adjustment will be made for any increase in the time of performance of the Contract necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified.

However, no adjustment shall be made under this Section for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of the Contract.

- C. In preparation for and during suspensions of Work, Contractor shall take every reasonable precaution to prevent damage to or deterioration of the Work. Contractor shall repair or replace at no cost to Trinity Metro work that is damaged or deteriorated during a work suspension due to Contractor's failure to comply with this Section. If Trinity Metro finds that Contractor is not taking a reasonable precaution and Contractor fails to take the precaution within 48 hours after written notice from Trinity Metro, Trinity Metro may cause the precaution to be taken and recover the reasonable costs of taking the precaution from Contractor.

**809** **Termination for Convenience**

- A. Whenever the interests of Trinity Metro may so require, Trinity Metro may terminate performance of work under the Contract in whole, or from time to time, in part for Trinity Metro's convenience. Trinity Metro shall exercise its right to terminate for convenience by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination under this Section, and except as required by Trinity Metro, Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting any amounts due under this clause:
1. Stop work as specified in the notice;
  2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for Materials, services, or facilities, except as necessary to finally complete the continued portion of the Contract;
  3. Terminate all subcontracts or orders to the extent they relate to the work terminated;
  4. Assign to Trinity Metro, as directed by Trinity Metro, all right, title and interest of Contractor under the subcontracts terminated, in which case Trinity Metro shall have the right to settle or to pay any termination settlements arising out of those terminations;
  5. With approval or ratification to the extent required by Trinity Metro, settle all outstanding liabilities and termination settlement Proposals arising from the termination of subcontract, and the approval or ratification will be final for purposes of this clause;
  6. Transfer title and deliver to Trinity Metro the following items:
    - a. The fabricated or un-fabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated, and
    - b. The completed or partially completed plans, drawings, information and other property that, if the Contract had been finally completed, would be required to be furnished to Trinity Metro;
  7. Complete performance of the Work not terminated;

8. Take any action that may be necessary, or that Trinity Metro may direct, for the protection and preservation of the property related to the Contract that is in possession of Contractor and in which Trinity Metro has or may acquire an interest; and
9. Use its best efforts to sell, as directed or authorized by Trinity Metro, any property of the types referred to in subparagraph 6 above; provided, however, that Contractor:
  - a. Is not required to extend credit to any purchaser, and
  - b. May acquire the property under the conditions prescribed by, and at prices approved by Trinity Metro.
- C. After reasonable effort to comply with subparagraph B.9., Contractor may submit to Trinity Metro a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Trinity Metro. Contractor may request Trinity Metro to remove those items or enter into an agreement for their storage. Within 15 days, Trinity Metro will accept title to those items and remove them or enter into a storage agreement. Trinity Metro may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- D. After termination, Contractor shall submit a final termination settlement Proposal to Trinity Metro in the form and with the certification prescribed by Trinity Metro. Contractor shall submit the Proposal promptly, but no later than one (1) year from the effective date of termination, unless extended in writing by Trinity Metro upon written request of Contractor within this one (1) year period. However, if Trinity Metro determines that the facts justify it, a termination settlement Proposal may be received and acted on after 1 year or any extension. If Contractor fails to submit the Proposal within the time allowed, Trinity Metro may determine, on the basis of information available, the amount, if any, due Contractor because of the termination and shall pay the amount determined.
- E. Subject to Paragraph D. above, Contractor and Trinity Metro may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on Work done. However, the agreed amount, whether under this Paragraph E. or Paragraph F. below, exclusive of costs shown in Subparagraph F.2 below, may not exceed the total Contract price as reduced by:
  1. The amount of payments previously made, and
  2. The Contract price of work not terminated. The Contract shall be

amended, and Contractor paid the agreed amount. Paragraph F. below shall not limit, restrict, or affect the amount that may be agreed to be paid under this paragraph.

- F. If Contractor and Trinity Metro fail to agree on the whole amount of costs to be paid because of the termination of work, Trinity Metro shall determine, on the basis of information available, the amount, if any, due Contractor, and shall pay the amount determined as follows:
1. All costs reimbursable under the Contract, not previously paid, for the performance of the Contract before the effective date of the termination, and part of those that may continue for a reasonable time with the approval of or as directed by Trinity Metro, however, Contractor shall discontinue those costs as rapidly as practicable.
  2. The costs of settling and paying termination settlement Proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract, if not included in subparagraph (1) above.
  3. The reasonable costs of settlement of the Work terminated, including the following costs:
    - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement Proposals and supporting data;
    - b. The termination and settlement of subcontracts; and
    - c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- G. The costs principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of the Contract, shall govern all costs claimed, agreed to, or determined under this Section.
- H. Contractor shall have the right of appeal, under the Claims clause, from any determination made by Trinity Metro under Paragraph D., F., or K., except that if Contractor failed to submit the termination settlement Proposal within the time provided in Paragraph D. or K., and failed to request a time extension, there is no right of appeal. Such termination settlement Proposal is a condition precedent to recovery under this Section. If Trinity Metro has made a determination of the amount due under Paragraph D., F., or K., Trinity Metro shall pay Contractor:
1. The amount determined by Trinity Metro if there is no right of appeal or

if no timely appeal has been taken, or

2. The amount finally determined on an appeal.
- I. In arriving at the amount due Contractor under this clause, there shall be deducted:
    1. All unliquidated advance or other payments to Contractor under the terminated portion of the Contract;
    2. Any claim which Trinity Metro has against Contractor under the Contract; and
    3. The agreed price for, or the proceeds of sale of, Materials, supplies, or other things acquired by Contractor or sold under the provisions of this clause and not recovered by or credited to Trinity Metro.
  - J. If the termination is partial, Contractor may file a Proposal with Trinity Metro for an equitable adjustment of the price(s) of the continued portion of the Contract. Trinity Metro shall make any equitable adjustment agreed upon. Any Proposal by Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by Trinity Metro.
  - K. Trinity Metro may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Contractor for the terminated portion of the Contract, if Trinity Metro believes the total of these payments will not exceed the amount to which Contractor will be entitled.
  - L. If the total payments exceed the amount finally determined to be due, Contractor shall repay the excess to Trinity Metro upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in Contractor's termination settlement Proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by Trinity Metro because of the circumstances.
  - M. Unless otherwise provided in the Contract or by statute, Contractor shall maintain all records and documents relating to the terminated portion of the Contract for three (3) years after final settlement. This includes all books and other evidence bearing on Contractor's costs and expenses under the Contract. Contractor shall make these records and documents available to Trinity Metro, at Contractor's

office, at all reasonable times, without any direct charge. If approved by Trinity Metro, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**810**    **Termination for Default**

- A.     Trinity Metro may terminate the Contractor for default if Contractor:
1.     Refuses or fails to commence the Work within the time required under the Contract;
  2.     Refuses or fails to prosecute the Work or any separable part, with the diligence that will ensure its completion within the time specified in the Contract including any extension;
  3.     Refuses or fails to provide sufficient and properly skilled workmen or proper Materials or equipment to complete the Work in an acceptable manner and without delay;
  4.     Refuses or fails to resume performance of the Work within a reasonable time after notice to do so following evidence of Contractor's abandonment of the Work or discontinuance of the performance of the Work;
  5.     Refuses or fails to perform any of its obligations under the Contract;
  6.     Refuses or fails to promptly pay its Subcontractors, laborers, and materialmen;
  7.     Refuses or fails to correct any design defect or error;
  8.     Refuses or fails to comply with the safety procedures on the Project in the manner addressed in the Contract;
  9.     Refuses or fails to complete the Work within the time specified in the Contract; or
  10.    Enters into proceedings relating to bankruptcy, whether voluntary or involuntary; and Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Contract Administrator; and this notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing, and shall include the date on which the bankruptcy petition was filed, and the identity of the court in which the bankruptcy petition was filed;



(collectively, "Events of Default"); then Trinity Metro shall have the right, if Contractor shall not cure any such default after seven (7) days' written notice thereof, to (i) terminate the Contract, (ii) take possession of and use all or any part of Contractor's Materials used by Contractor in the performance of the Work, and/or (iii) complete the Work in any manner Trinity Metro deems desirable, including engaging the services of other parties therefor. Any such act by Trinity Metro shall not be deemed a waiver of any other right or remedy of Trinity Metro or a breach of the Contract. Contractor and its sureties shall be liable for any damage to Trinity Metro resulting from Contractor's refusal or failure to complete the Work within the specified time, whether or not Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by Trinity Metro in completing the Work.

- B. If, after termination of Contractor's right to proceed, it is determined that Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been under "Termination for Convenience."
- C. The rights and remedies of Trinity Metro in this clause are in addition to any other rights and remedies provided by law or under the Contract.
- D. If Trinity Metro has not made payment on an invoice submitted by Contractor within thirty (30) days after its receipt, unless such failure to make payment is the result of Contractor's actions or inactions, Contractor shall give Trinity Metro written notice of such failure. Should Trinity Metro fail to pay such invoice for reasons other than those allowed under the Contract, within thirty (30) days of receipt of such written notice, Contractor may terminate the Contract and recover from Trinity Metro payment for Work executed, prior to termination. Trinity Metro shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination.
- E. Contractor shall not suspend the Work or take any action related to a default by Trinity Metro without first notifying, in writing, Trinity Metro of its default, the nature thereof, and allowing Trinity Metro thirty (30) days to cure such default, except as to any default for which the law requires a shorter time period.
- G. Contractor and Trinity Metro agree that if Contractor reaches Substantial Completion of the Project, then they cannot terminate the Contract pursuant to the terms of this Section.
- H. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Trinity Metro.
- I. Opportunity to Cure

The Trinity Metro in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 – 60 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to the Trinity Metro's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from The Trinity Metro setting forth the nature of said breach or default, the Trinity Metro shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Trinity Metro from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- J. Waiver of Remedies for any Breach in the event that the Trinity Metro elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the Trinity Metro shall not limit the Trinity Metro's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

#### **811** Claims

- A. It is an express condition precedent of Contractor's right to make a claim or to receive any recovery or relief under or in connection with the Contract to strictly comply with the provisions of this Section. In order to assert a claim for damages, additional compensation, additional time, or other reasons, Contractor must submit a written Notice of Intent of Claim to Trinity Metro in accordance with the provisions of this Section. Every claim, whether for damages, additional compensation, additional time, or other reasons shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Contractor by his or her signature) of Contractor, verifying the truth and accuracy of the claim. Such verification shall be a condition precedent to the acceptability of any claim asserted by Contractor. Failure to strictly comply with the provisions in this Section shall constitute a waiver by Contractor of any right, equitable or otherwise, to bring any such claim against Trinity Metro.
- B. If Contractor is of the opinion that (1) certain work necessary or required to accomplish the result intended by the Contract or certain work ordered to be done as contract work by Trinity Metro is actually Extra Work and such work is not within the Scope of Work; or (2) any determination, action, or order of Trinity Metro violates the terms and provisions of the Contract, then Contractor shall promptly, before proceeding with such work or complying with such order or determination, notify Trinity Metro in writing of its contentions with respect thereto and request a final determination by Trinity Metro concerning whether the work is Extra Work or Contract work or whether the order violates the Contract. Such determination by Trinity Metro shall be given in writing to

Contractor.

1. If Trinity Metro determines that the work in question is Extra Work and not Contract work, or that the order complained of requires performance by Contractor beyond that required by the Contract or violates the terms and provisions of the Contract, thereupon Trinity Metro shall cause either (a) the issuance of a written order covering the Extra Work as provided for in Section 501, or (b) the determination or order complained of to be rescinded or so modified so as not to require performance beyond that required by the terms and provisions of the Contract.
2. If Trinity Metro determines that the work in question is Contract work and not Extra Work, or that the determination or order complained of does not require performance by Contractor beyond that required by the Contract or violates the terms and provisions of the Contract, Trinity Metro shall direct Contractor to proceed, and Contractor must promptly comply. In order to reserve its right to claim compensation for such work resulting for such compliance, however, Contractor must, within fourteen (14) days of receiving Trinity Metro's determination and direction, notify Trinity Metro in writing that the work is being performed, or that the determination and direction is being complied with, under protest.
3. If the Contractor fails to appeal to Trinity Metro under this Section for a determination or, having so appealed, should Contractor thus fail to notify Trinity Metro in writing of its protest, Contractor shall be deemed to have waived any claim for extra compensation or alleged damages. No oral appeals or oral protests, no matter to whom made, shall be deemed substantial compliance with the provisions of this item.
4. In addition to the foregoing requirements and conditions, Contractor shall, upon notice from Trinity Metro, produce for examination and audit at Contractor's office, by representatives of Trinity Metro, all its books and records showing all of its acts and transactions in connection with the contractual performance as well as relating to or arising by reason of the matter in dispute and any Extra Work related claims.
5. Unless the aforesaid requirements and conditions shall have been complied with by Contractor, Trinity Metro shall be released from all claims arising under, relating to, or by reason of the Contract, except for the sums to be due under the payment provisions of the Contract. **IT IS FURTHER STIPULATED AND AGREED THAT NO CONDUCT ON THE PART OF TRINITY METRO OR ANY AGENT OR EMPLOYEE OF TRINITY METRO SHALL EVER BE CONSTRUED AS A WAIVER OF THE REQUIREMENTS OF THIS SECTION, WHEN SUCH REQUIREMENTS CONSTITUTE AN ABSOLUTE**

**CONDITION PRECEDENT TO ANY APPROVAL OF ANY CLAIM FOR EXTRA COMPENSATION, NOTWITHSTANDING ANY OTHER PROVISIONS OF THE CONTRACT DOCUMENTS; AND IN ANY ACTION AGAINST TRINITY METRO TO RECOVER ANY SUM IN EXCESS OF THE CONTRACT AMOUNT, CONTRACTOR MUST ALLEGE AND PROVE STRICT COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.**

6. While Contractor or any Subcontractor is performing Extra Work, is performing disputed work, or complying with a determination or order under protest, Contractor shall furnish, daily, to Trinity Metro with three copies of verified statements showing:
- a. The name and number of each worker, foreman, timekeeper, mechanic, or laborer employed on Extra Work or engaged in complying with such determination or order, the character of the Extra Work each is doing and the wages paid to him or her, including the rate and amount of payroll taxes, contribution of insurance and federal social security; and
  - b. The nature, cost, and quantity of any Materials, supplies, tools, plant or construction equipment furnished or used in connection with the performance of the Extra Work or in complying with such determination or order, and from whom purchased or rented.

The above-required submittals are in addition to and not in lieu of other submittals required under the Contract.

Failure of Contractor to comply strictly with these requirements, which are a condition precedent to recovery, shall constitute a waiver of any claim for extra compensation on account of the performance of such Extra Work.

- C. The written Notice of Intent of Claim shall set forth:
1. The reasons for which Contractor believes additional compensation will or may be due;
  2. The nature of the costs involved;
  3. Contractor's plan for mitigating such costs; and
  4. If ascertainable, the amount of the potential claim.
- D. The Notice of Intent of Claim must be given to Trinity Metro's representative

within ten (10) days after the occurrence of the event giving rise to the potential claim. If the event is claimed to be an act or omission by Trinity Metro, notice must be given prior to commencing the portion of the Work to which such alleged act or omission relates.

- E. The notice requirements of this Section are in addition to any other notice requirement set forth in the Contract and are an absolute condition precedent for approval of a Claim..
- F. As a further condition of precedent to approval of a claim, all claims shall be filed by Contractor within thirty (30) days of the event giving rise to the claim, in sufficient detail to ascertain the basis and amount of said claim. It is the responsibility of Contractor to furnish, when requested by Trinity Metro, such further information and details as may be requested. Contractor agrees to give Trinity Metro access to its books, records and other Materials relating to the Work, and will cause its Subcontractors to do the same, so that Trinity Metro can investigate such claim.
- G. Contractor's failure to submit any claim in writing within the relevant time and in the manner prescribed above shall waive any relief that might otherwise be due with respect to such claim.
- H. Each claim Contractor submits for adjustment on account of delay for any cause shall be accompanied by a revised Construction Schedule reflecting the effects of the delay and Proposals to minimize these effects. If no Construction Schedule has been submitted to Trinity Metro reflecting conditions prior to the delay for which relief is sought, then a Construction Schedule so reflecting these conditions shall be prepared and submitted with the claim.
- I. Trinity Metro shall be entitled to a reasonable time, after it receives each claim in writing and accompanied by supporting documents and evidence, in which to investigate, review, and evaluate such claim. When Trinity Metro has completed its investigation, review, and evaluation, it will advise Contractor in writing of the relief, if any, to which it is entitled. The decision of Trinity Metro shall be final and conclusive unless, on or before the 90<sup>th</sup> day from the receipt of Trinity Metro's decision, Contractor provides a written appeal of such decision to Trinity Metro. In the event of such an appeal, the claim shall become a Dispute and shall be resolved in accordance with the Contract's Dispute provisions. **Trinity Metro's timely receipt of a written appeal from Contractor is a condition precedent to Contractor's pursuit of any relief other than that provided in Trinity Metro's decision.**
- J. In no event shall Contractor claims be made after Final Payment is made.
- K. A claim will cease to be a claim if, at any time, a change order resolving the issue

is signed by all parties.

L. Trinity Metro claims against Contractor. Should Trinity Metro determine, based on its interpretation of the Contract that Contractor owes relief to Trinity Metro, then Trinity Metro shall provide Contractor with written notice of its decision in that regard and the relief owed. The decision of Trinity Metro shall be final and conclusive unless, on or before the 30<sup>th</sup> day from the receipt of Trinity Metro's decision, Contractor provides a written appeal of such decision to Trinity Metro. In the event of such an appeal, the claim shall become a Dispute and shall be resolved in accordance with the Contract's Dispute provisions. **Trinity Metro's timely receipt of a written appeal from Contractor is a condition precedent to Contractor's avoidance of all obligations of Contractor as provided in Trinity Metro's decision.** All amounts payable to Trinity Metro by Contractor as a result of a claim by Trinity Metro may, at Trinity Metro's discretion, be offset against and deducted from amounts otherwise payable to Contractor. If no amounts remain owed to Contractor, or if the remaining amount owed to Contractor is insufficient to satisfy Trinity Metro's claim, then Contractor shall, absent an appeal, pay the claim amount on or before the 30th day from its receipt of Trinity Metro's decision.

Trinity Metro may assert a claim against Contractor at any time, including after Final Payment, with or without prior notice of such claim or the event or events giving rise to same.

#### **812 Payment of Claims**

If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a Subcontractor by any person in connection with the Contract as the claim becomes due, Trinity Metro may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor pursuant to the Contract. Trinity Metro's payment of a claim under this Paragraph shall not relieve Contractor or Contractor's surety from responsibility for such claims.

#### **901 Audit and Inspection of Records**

A. Under the required "open book" accounting, Contractor shall keep full and detailed project records and exercise such controls as may be necessary for proper business and financial management under the Contract. Trinity Metro, Trinity Metro's accountants, attorneys or any local, state or federal governmental authority, or their duly authorized representatives shall be afforded access to Contractor's Project records and Contractor shall preserve the Project's records and shall make them available for inspection or copying for a period of three (3) years after Substantial Completion, or for such longer period as may be required by any applicable laws. All Project records related to financial matters will be maintained in accordance with generally accepted accounting principles and audit standards, consistently applied. There will be an "open book" policy in

effect at all times with regard to all Project records maintained by Contractor, or anyone on its behalf. Trinity Metro, Trinity Metro's accountants or any local, state or federal governmental authority, or their duly authorized representatives will have the right to audit the Project records of Contractor, Subcontractors, and Suppliers. If the audit results in a finding that an overcharge or error of any nature has occurred, Trinity Metro will adjust Contractor's application(s) for payment or seek reimbursement for payments already made.

- B. Contractor further agrees to include in all of its subcontracts under the Contract a provision to the effect that the Subcontractor agrees that Trinity Metro, the U.S. Department of Transportation, the State of Texas and the Comptroller General of the United States, or any of their duly authorized representatives will, until the expiration of three years after final payment is made under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Subcontractor. The term "subcontract" as used in this Section excludes:

1. Purchase orders not exceeding \$10,000.00 and
2. Subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

- C. The periods of access and examination described in paragraphs A. and B. of this Section will continue until all questions, disputes, claims, litigation, appeals, and exceptions have been resolved for records that relate to:

1. Disputes between Trinity Metro and Contractor, and any Subcontractor.
2. Litigation or settlement of any claims arising out of the performance of the Contract, or
3. Costs and expenses of the Contract.

**902 Notices and Communications**

- A. Prior to issuance of the NTP, any notice to Trinity Metro will be effective only if it is delivered to Trinity Metro's Procurement Department, 801 Grove Street, Fort Worth, Texas 76102. Following issuance of the NTP, all communications and notices shall be delivered to the address designated by Trinity Metro. All correspondence shall reference the Contract Number.
- B. Prior to commencement of the Work, a notice to Contractor will be effective if it is delivered to the individual who signed the Contract on behalf of Contractor at the address shown with that signature, to a corporate officer if Contractor is a

corporation, to a general partner if Contractor is a partnership or to another individual designated by Contractor in the Contract or in a written notice to Trinity Metro.

**903 Paragraph Headings and Other Titles**

The parties agree that paragraph headings and other titles used in the Contract are for convenience only, and are not to be used to interpret the Contract.

**904 Assignment**

Contractor shall not assign the whole or any part of the Contract or any monies due or to become due hereunder without the prior written consent of Trinity Metro.

**905 Severability**

To the maximum extent possible, each portion, provision or part of the Contract will be interpreted in such a manner as to be effective and valid under all applicable law. If any portion, provision, or part of the Contract is or the application thereof to any person or circumstances found by a court of competent jurisdiction to be unenforceable, such portion, provision, or part shall be severed from the Contract and the validity and enforceability of the remaining portions, provisions, or parts shall remain unaffected. In the event any that any portion, provision, or part to the Contract is declared illegal, invalid or unenforceable, the parties agree to negotiate in good faith for a proper amendment to the Contract addressing the severed portion, provision, or part.

**906 Complete Agreement**

The Contract (including Attachments, the Special Provisions, the General Provisions, other documents and manuals incorporated herein) is the full and complete agreement between Trinity Metro and Contractor with respect to the subject matter herein and supersedes any and all prior agreements between the parties hereto.

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220. IF, and all future FTA Circular revisions are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Trinity Metro requests, which would cause Trinity Metro to be in violation of the FTA terms and conditions.



**907 Waiver**

The waiver or excuse by Trinity Metro of the breach of any provision of the Contract by Contractor shall in no way impair the right of Trinity Metro to enforce the provision for any subsequent breach thereof. All remedies provided hereunder are cumulative and are in addition to all other remedies available at law or in equity.

**908 Execution of the Contract**

The Contract may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of the Contract may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

**909 Publicity and Advertising**

Contractor, its Subcontractors, and Suppliers shall not publish nor cause to be published any advertisement or other material, including news releases and technical papers, regarding the Contract the subject matter of the Contract or the Project at any time without the prior written authorization of Trinity Metro. Contractor shall refrain from discussing this project with the media. Inquiries from the media shall be immediately referred to Trinity Metro. Contractor shall not display any signs, posters, or any other advertising matter in or on the Work or on or around the Work Site, other than those prescribed by the Contract or by law, without the prior written authorization of Trinity Metro. In addition, advertising or other copy mentioning Trinity Metro or quoting the opinions of any of its employees shall not be released before such copy is approved in writing by Trinity Metro before release. Any material proposed for publication by Contractor must be factual, and not state or imply endorsement by Trinity Metro or any firm, service, or product.

**SECTION 8 CONSTRUCTION SAFETY MANUAL****TABLE OF CONTENTS****Part I****Construction Safety Program**

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- 1.2 Definitions
- 1.3 Construction Safety Responsibilities

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**PART I****1.1 Program Objectives**

The Construction Safety Program has been established by the Trinity Metro (hereafter referred to as the Trinity Metro) to promote safety and to minimize and control hazards and risks associated with the construction, repair, and related services of the project. The specific Construction Safety Program goals are as follows:

- A. Minimize personal injuries and property damage.
- B. Achieve greater efficiency.
- C. Reduce direct and indirect costs.

The effectiveness of the Construction Safety Program will depend upon the active participation and cooperation of contractor, the contractor's employees and any subcontractors and their employees and the coordination of their efforts with the Trinity Metro in carrying out the following basic procedures.

- A. Plan all work to minimize the potential for personal injury, property damage, and loss of productive time
- B. Comply with federal, state and local laws, ordinances, and regulations; industry standards; and DOT regulations and requirements.
- C. Maintain a system of prompt detection and correction of unsafe practices and conditions.
- D. Establish and conduct an educational program to stimulate and maintain interest and cooperation of all employees through safety meetings and safety training programs, through the use of personal protective equipment and mechanical guards, and through prompt notification and investigation of all accidents or claims to determine the causes and to take necessary corrective action.

**1.2 Definitions**

- A. **Construction Safety Program**  
The safety and loss prevention program established by the Construction Safety Management Committee to identify the hazards and risks associated with construction projects.

- B. **Contract**  
The written agreement by and between the Trinity Metro and a Contractor.
- C. **Contractor**  
The term used to refer to all Contractors, Subcontractors, and sub-contractors of any tier.
- D. **Contractors Superintendent**  
The Contractors Superintendent is the person given the project or task who has the overall responsibility to see that the work or job is satisfactorily completed.
- E. **Insureds**  
The Trinity Metro, Consultants, Contractors, Architects, Engineers, Subcontractors, and any other party named as insured's on the Certificates of Insurance signed by a duly authorized representative of the Insurance Carriers.
- F. **Job Site**  
The area and easement as defined within the Contract or as directed by the Trinity Metro.
- G. **Occupational Safety and Health Agency (OSHA)**  
The federal government agency responsible for providing the rules and regulations on safety and health requirements in the work place.

### 1.3 Construction Safety Responsibilities

#### A. Trinity Metro Safety Representative

The Trinity Metro employee responsible for the day-to-day routine oversight of the Construction Safety Program for which the Trinity Metro has construction management or oversight management responsibilities.

1. Review all applicable contract documents for safety related problems.
2. Review Contractors safety plans and programs, descriptions of the hazards peculiar to their work.
3. Work diligently with Trinity Metro to ensure compliance with all safety provisions, including OSHA (29 C.F.R. parts 1910 and 1926) DOT (49 C.F.R part 40), and other laws, regulations and applicable standards as set forth in this Construction Safety manual and as otherwise required by plans and specifications and the Traffic Control Plan. .
4. Participate in meetings with Proposers and contractors (such as pre-bid,

pre-award and pre-construction conferences) to outline and explain the Construction Safety Program.

5. Monitor the construction management Safety-related staff actions on all safety related issues.
6. Assist Construction Management field personnel on safety matters. Act as a technical advisor for safety issues and perform necessary actions to assure that safety programs and procedures are implemented in the field.

B. Contractor

THE CONTRACTOR IS RESPONSIBLE FOR ACCIDENT PREVENTION AND JOB SITE SAFETY. This responsibility cannot be delegated to sub-contractors, suppliers, the Trinity Metro, or other persons.

In compliance with these provisions, the Contractor shall comply with the latest edition of this safety manual and perform the following:

1. Ensure that all of its subcontractors, suppliers, etc. are provided with a copy of this Construction Safety Manual and are informed of their obligations with regard to safety.
2. Plan and execute all work to comply with the stated objectives and safety requirements contained in the Trinity Metro's Construction Safety Manual: contract provisions; federal, state and local laws and regulations; and industry standards.
3. Within ten (10) calendar days of notification of the contract award, submit in writing a Contractors Safety Plan to the Trinity Metro, who will forward the documents to the PSM for review and recommendations. The Contractors Safety Plan must comply with Trinity Metro's Construction Safety Plan. Construction will not begin without an appropriate Safety Plan. Delay in submitting a written Contractors Safety Plan shall not constitute grounds for a contract schedule extension or delay claim.
4. Maintain an orientation program for new employees, which will include as a minimum a review of (a) hazards present in the area in which they will be working and (b) the personal protective equipment and apparel the workers will be required to use or wear as specified under OSHA.
5. Hold safety meetings on a weekly basis. Documentation of topics

discussed and attendees shall be maintained.

C. Contractor's Superintendent

This person will ensure compliance with all provisions of the contract, including the Trinity Metro's Construction Safety Manual, OSHA, and other agency and industry safety requirements and standards. Additional duties of the Superintendent shall include the following:

1. Review and direct immediate action to correct all substandard safety conditions brought to his/her attention.
2. Take an active part in all supervisory safety meetings, including the discussion of observed unsafe work practices or conditions, a review of the accident experience and corrective actions, and encouragement of safety suggestions from employees.
3. Cooperate with the Trinity Metro and Safety Representatives of the Insurance Administrators or the Insurers.
4. Provide the Trinity Metro with copies of all OSHA citations as soon as received.

D. Job Foremen

The Contractor's Job Foremen are an integral part of an effective safety program, and the amount of effort they put into accident prevention on their daily assignments determines whether or not a good accident record is established.

A Job Foreman's responsibilities shall include the following:

1. Instructing the personnel under his/her supervision in safe work practices and work methods at the time the employees are given work assignments.
2. Seeing that his/her employees have and use the proper protective equipment and suitable tools for the job.
3. Continuous monitoring to ensure that no unsafe practices or conditions are allowed to exist on the job sites.
4. Correcting or reporting immediately to the Subcontractors Manager any unsafe conditions, practices or violations of job security.

5. Performing a complete investigation of all accidents and taking corrective actions to prevent a recurrence.
6. Setting a good example for personnel.
7. Holding weekly "tool box" safety meetings with work crews to (a) discuss any observed unsafe work practices or conditions, (b) to review the accident experience of the crew and discuss corrective action to prevent future accidents, and (c) to encourage safety suggestions from the employees and report their recommendations to the Safety Manager or Superintendent.
8. Seeing that prompt first-aid is administered to an injured employee.

## **PART II**

### **2.1 General Safety Provisions**

- A. The Contractor shall protect the health and safety of employees, the public and other persons: prevent damage to property, materials, supplies, and equipment: and avoid interrupting the normal operation of the Railroads. To achieve these purposes, the Contractor shall perform the following:
  1. Comply with all federal, state and local safety laws and regulations and industry standards including, but not limited to, the application of OSHA Construction Safety and Health Regulations 29 CFR Part 1926 and 29 CFR Part 1910: and the Trinity Metro's Construction Safety Program regulations and orders: and shall require compliance with the foregoing by all Subcontractors and Suppliers at every tier.
  2. Establish a Fire Prevention Plan referencing OSHA and NFPA standards. Approved safety cans shall be used for flammable and combustible liquids. "NO SMOKING OR OPEN FLAME" signs and fire extinguishers shall be provided where required. The Contractors Fire Prevention Plan shall be submitted to Trinity Metro for approval.
  3. Ensure all tools and equipment used on job sites complies with OSF-44 standards.
  4. Use electrical tools, cords, appliances, etc., which comply with applicable OSHA and the National Electrical Code standards
  5. Secure all material and equipment, such as trashcans and lightweight construction materials, to prevent displacement from wind.

6. Have temporary electrical service equipped with appropriate ground fault circuit interrupters. This does not apply to generators less than 5 K.
7. Inspect all ladders prior to use. Defective ladders must be removed from service immediately. All ladders shall have firm footing, shall be made secure at the top and shall extend 36 inches above the landing level.
8. All outdoor temporary electrical wiring within the construction area will be Type SO direct burial type Romex, or installed in rigid conduit. If installed outside the limits of the construction area it shall meet the requirements of the electrical code.
9. Ensure that no welding or cutting operations, which may provide an open flame or hot surface, are performed until the City's Fire Marshal has been notified and a permit obtained to conduct such operations. The Fire Marshal shall inspect the area in which the work is to be performed and determine that adequate fire and safety precautions have been taken before a permit is issued.
10. Have anti-flashback devices installed on the fuel side of all fuel gas and oxygen cutting torches.
11. Secure compressed gas cylinders in upright position at all times. Valve caps shall be in place when not in use. They shall be transported and stored in accordance with federal and state standards.
12. Provide safety devices on all air compressors with hoses exceeding one-half inch inside diameter at the source of supply or branch line to reduce pressure in case of hose failure.
13. Do not allow cut-off piles to free-fall if the top on the pile stubs out of the ground above knee high. Pile holes shall be kept free of cut-off piles.
14. Control dust by using water trucks, sweeping and other additional means.
15. Ensure that no material is dropped outside the exterior wall of any building where the drop distance is more than twenty (20) feet high, unless contained in a chute enclosed on all sides. If the drop distance is less than twenty (20) feet high, the landing area must be barricaded. Material may be dropped through openings in the building, but must be barricaded at least forty-two (42) inches high and back six (6) feet or more from the edge of the open area at the landing.



16. Implement any additional measures the Trinity Metro determines to be reasonably necessary to provide project safety.

B. The Contractor shall not receive additional payment or reimbursement for safety items and procedures, which have been identified as required by the Trinity Metro's Construction Safety Program under any Trinity Metro contract.

## 2.2 Work Preparation

Before commencing with the work the Contractor shall perform the following:

A. Meet with the representatives of the Trinity Metro to discuss and develop a written Contractor's Safety Plan, which must be reviewed and found acceptable before work, may begin.

B. Establish a respiratory protection program and implement as required.

## 2.3 Contractor Personnel Requirements

It is the Trinity Metro's desire to maintain a healthy and safe place to work. To do this the Trinity Metro must have the active participation and cooperation of all Contractors, Subcontractors, and their employees. The Contractor and Subcontractor are responsible for orienting employees on the specific safety rules that must be followed by all persons working on the project. A list of minimum requirements is as follows:

A. The Contractor shall be responsible for providing and requiring the use of required personal protective equipment for its employees.

B. Hard hats shall be worn at all times while on the construction site. Hard hats shall be worn properly with the bill forward unless the wearing of eye protection prevents this, as in the case of welders. The bill is designed for facial and eye protection from falling objects, dust, etc.

C. Hearing protection shall be worn when required.

D. A serviceable pair of work construction shoes or boots made of leather or similar material shall be worn. Tennis shoes, sandals and other similar type shoes are not permitted.

E. Full length pants without excessive length or flared bottoms will be required. Shirts must cover the entire midsection and the sleeves must cover the entire shoulder. Sleeveless shirts, tank tops, net shirts, halter tops, etc., shall not be worn on the construction site.

- F. Long hair shall be contained under a hard hat or net if the individual is working where hair may become entangled.
- G. Gambling, fighting or horseplay shall not be tolerated.
- H. No employee shall possess, use, or be under the influence of drugs or alcohol while on the project.
- I. Any Contractor/Subcontractor employee who is found to be in violation of these safety rules or other Trinity Metro policies or procedures will be removed from the job site.
- J. Safety belts shall not be used as workers fall protection. Full body harnesses are the only acceptable fall protection outside of safety rails and nets. Safety belts may be used to position workers on a wall form, rebar wall, or prevent a worker from falling over a deck or work platform edge only. With the exception of steel erection, at a height of 6 feet or more positive fall protection will be used. If the fall distance exceeds 15 feet, a decelerating lanyard or device will be used.

#### 2.4 Trenches, Excavations and Stockpiled Materials

The following guidelines are required for all trenches, unmarked or unit holes, and excavations:

- A. All trench banks more than five feet high shall be properly sloped by soil classification. If the angle of slope cannot be achieved, the trench shall be shored. All shoring systems shall be either sheathing, tight planking, or a trenching shield, and shall be submitted to the Trinity Metro for review. This requirement does not apply to trenches in sound rock.
- B. Barricades around open holes, trenches, drop-offs, etc. shall be weighted or secured to the ground to prevent displacement by wind.
- C. Coverings for open trenches or excavations shall be of sufficient strength to support the weight of the heaviest vehicle operating on the roadway (i.e. 1" thick steel plate).
- D. Materials and equipment shall be stored in approved areas when not in use and where they will not constitute a hazard to rail operations. The Contractor shall inspect all construction and storage areas as often as necessary to be aware of conditions. All stockpile materials shall be prominently marked as directed by the Trinity Metro.

## 2.5 Not Used

## 2.6 Cranes

- A. The Contractor shall provide the Trinity Metro with a copy of a Crane Safety Certification for each crane brought on the job. A crane may be certified by either a master mechanic or certified manufacturer's representative.
- B. All sling and crane load line hooks shall have safety latches installed or shall be moused. (This does not apply to specialty slings and hooks, such as sorting or shake out slings or self-adjusting pipe slings, commonly called "Running I Slings.") Specialty slings and hooks shall not be used to set steel or move materials over workers.
- C. Christmas treeing of crane loads is not allowed.
- D. Out rigger cranes in use shall be blocked to the following maximum requirements.
  1. All blocking boards shall be 8" x 8" minimum for fixed boom cranes, and 4" x 4" shall be used for hydraulic cranes under 30 tons capacity.
  2. Size of float pad blocking shall be determined by the following formulas.  
  
Size = crane capacity tons + 5  
  
Example  $\frac{30 \text{ ton crane}}{5} = 6 \text{ square feet}$
  3. All out rigger cranes shall be operated only without riggers fully extended. Exception is a pick and move lift.
- E. Crane-supported worker platforms shall not be used unless the Contractor's Project Manager, Safety Representative and Resident Engineer agree in advance in each case that there is no other practical method of performing the work.
- F. Riding of crane hooks by personnel is absolutely forbidden.

## 2.7 Motor Vehicle Operations

- A. Each Contractor/Subcontractor or supplier employee driving motor vehicles on the job site shall have a valid driver's license and each such motor vehicle shall have a current inspection sticker as required by the state of Texas.

- B. No vehicle or equipment operator shall dismount any equipment without first turning off the engine and/or securing the equipment from movement.
- C. All vehicles with obstructed view to the rear shall be equipped with a functioning backup alarm.
- D. Spoil covers shall be used whenever trucks are loaded and operating off Trinity Metro property.
- E. The Contractor shall provide means for cleaning haul vehicles as needed to prevent mud or other deleterious material from accumulating on public roadways.
- F. Employee parking shall be as designated in the contract documents.
- G. All construction equipment windshields and side windows shall be clean and unbroken. Safety equipment such as head, tail, brake, and clearance lights, etc., shall be kept clean and tested daily, or at the beginning of each shift while operating on the rail job site.
- H. Heavy equipment with rotating superstructure such as backhoes and power shovels shall be guarded in such a manner that rotation of the superstructure shall not present danger to pedestrians or infringe into any traffic lane.
- I. Access to the construction sites and haul roads shall be as shown and described in the contract documents.

## 2.8 Reporting Accidents and Other Hazards

- A. All accidents which occur from operations or work performed under the Trinity Metro Construction Program or other facilities/construction contracts must 'be verified, investigated, reported, and analyzed as prescribed by this manual.

All Contractors and others involved in the programmed construction shall instruct their employees and other personnel to follow these procedures if someone is injured:

- 1, Seek medical assistance for anyone who is injured. The injured person's supervisor will see that first aid is administered.
2. Except for rescue and emergency procedures, secure the area tightly and quickly. The accident scene shall not be disturbed until it has been released by the investigating Trinity Metro officials.

3. Immediately report all accidents or hazards resulting in a fatality, the hospitalization of three or more people, or property damage estimated in excess of \$1,000 to the Trinity Metro.
4. The Contractors Safety Representative or other designated person, must notify all other parties and report the event as outlined in the Contractors Safety Plan.
5. The local Occupational Safety and Health Administration Office (OSHA) must be notified immediately in the event of an accident involving the death of an employee, or serious injury to three or more workers.
6. Employees are responsible for reporting all injuries or occupational related illnesses as soon as possible to their employer or immediate supervisor.
7. Copies of the written report shall be delivered to the Trinity Metro and the Insurers within forty-eight (48) hours of the occurrence of the accident or hazard.
8. Except in cases of emergencies, when the injured person is employed by the Contractor, the foreman or immediate supervisor must provide the injured person with written authorization to seek medical treatment.
9. All accident exposures and hazards incident to the work shall be reported. These records are to be maintained and submitted to the Trinity Metro and shall include:
  - a. An in-depth investigation to identify all causes and to recommend hazard control measures,
  - b. The total number of man-hours worked by the 10th of each month with a log of occupational injuries and illnesses (OSHA Form, No. 200 or equivalent as prescribed by 29 CFR 1904),
  - c. A list of the first aid treatments not reported on the OSHA Form No. 200.
10. In the event an employee is exposed to toxic materials or harmful physical agents, the Contractor shall notify the Trinity Metro of the incident and the corrective action taken to eliminate further exposures. A list of the first aid treatments not reported on the OSHA Form No. 200.
11. Only authorized personnel, such as representatives of City of Fort Worth's Public Safety Division, shall be given information pertaining to the event. Questions from the media and others shall be referred to the

Trinity Metro's Director of Marketing, at (817) 215-8669.

- B. The Contractors emergency procedures should be continually reviewed and adjusted to provide maximum effectiveness. All such procedures are to be included in the Contractors Safety Plan and coordinated with Trinity Metro.
- C. The Contractor will develop procedures under the Trinity Metro's guidance to contact the following offices for the events listed below:
 

Fire Department	-	Injuries and Medical Emergencies
Police Department	-	Bomb Threats and Public Demonstrations
- D. Emergencies must be handled by the ranking individual present. In order that necessary emergency services are supplied promptly, each Contractor should delegate responsibility for making emergency calls.
- E. First aid supplies approved by a licensed physician shall be accessible for immediate use. One first-aid kit (15 unit or better equivalent) shall be provided for each twenty-five (25) workers, or fraction thereof.
- F. At least one person shall be available at the work site to render first-aid who has valid certificates in first-aid training from the American Red Cross, or an equivalent training program that can be verified. Further, a minimum ratio of one such qualified person for every twenty-five (25) employees shall be maintained throughout the course of the construction. Said persons shall affix suitable emblems to the rear of their hard hats for identification.
- G. Actions to be taken during emergencies should be discussed regularly with the Contractors supervisory personnel and at "tool box" safety meetings.
- H. A telephone or other means of two-way communication shall be made available at the site before construction begins. Telephone numbers and locations of emergency facilities including, but not limited to, hospitals, physicians, fire and emergency medical services, and police shall be posted in conspicuous locations at the job sites and at all telephone locations.

## 2.9 Protection of the Public and Property

- A. For the purpose of this Section "public" shall be construed as including all persons not employed by the Contractor, Subcontractor, Consultant, or the Trinity Metro; however, Trinity Metro employees not directly involved with the Project, facilities or other related construction contracts shall be considered members of the public.

- B. In addition to the regulations identified within the specific contract documents, the following precautions are required:
1. The Contractor shall take all necessary action to prevent injury to the public or property damage.
  2. Work shall not be performed in any area occupied or in use by the public unless specifically permitted by the contract or in writing from the Trinity Metro
  3. When it is necessary to maintain public use of work areas involving sidewalks, entrances to buildings, lobbies, corridors, aisles, stairways, and vehicular roadways, the Contractor shall protect the public with appropriate guardrails, barricades, temporary fences, overhead protection, temporary partitions, shields, and adequate visibility. Such protection shall guard against harmful radioactive rays or particles, flying materials, falling or moving materials and equipment, hot or poisonous materials, explosives and explosive atmospheres, flammable or toxic liquids and gases, open flames, energized electric circuits, or other harmful exposures.
  4. Sidewalks, entrances to buildings, lobbies, corridors, aisles, doors, or exits that remain in use by the public shall be kept clear of obstructions to permit safe ingress and egress of the public at all times.
  5. Appropriate warnings, signs and instructional safety signs shall be conspicuously posted where necessary. In addition, a signalman shall control the moving of motorized equipment in areas where the public might be endangered.
  6. Sidewalk sheds, canopies, catch platforms, and appropriate fences shall be provided when it is necessary to maintain public pedestrian traffic adjacent to the erection, demolition or structural alteration of outside walls on any structure.
  7. A temporary fence shall be provided around the perimeter of aboveground operations adjacent to public areas except where a sidewalk shed or fence is provided by the contract or as required by subparagraph (3) above. Perimeter fences shall be at least six (6) feet high. They may be constructed of wood or metal frame and sheathing, wire mesh or a combination of both as provided in contract documents. When the fence is adjacent to a sidewalk near a street intersection, at least the upper section of the fence shall be open wire mesh from a point not over four (4) feet above the sidewalk and extending at least twenty-

five (25) feet in both directions from the corner of the fence.

8. Warning signs and lights, including lanterns, torches, flares, and electric rights, meeting Texas State Uniform Traffic Control Devices and DOT requirements, shall be maintained from dusk to sunrise along the guardrails, barricades, temporary sidewalks, and at every obstruction to the public. They shall be placed at both ends of such protection or obstructions and not over twenty (20) feet apart alongside of such protection or obstructions.
9. Temporary sidewalks shall be provided when a permanent sidewalk is obstructed by the Contractors operations. They shall be in accordance with the requirements of the local ordinances. Guardrails shall be provided on both sides of temporary sidewalks.
10. Guardrails shall be provided on both sides of vehicular and pedestrian bridges, ramps, runways, and platforms. Pedestrian walkways elevated above adjoining surfaces, or walkways within six (6) feet of the top of excavated slopes or vertical banks shall be protected with guardrails, except where sidewalk sheds or fences are provided as required by subparagraph (3) above. Guardrails shall be made of rigid materials capable of withstanding a force of at least two hundred (200) pounds applied in any direction at any point in their structure. Their height shall be approximately forty-two (42) inches. Top rails and posts may be two inches by four inches (2 x 4) dressed wood or equal material. Posts shall not be over eight (8) feet apart.
11. Barricades meeting Trinity Metro requirements shall be provided where sidewalk sheds, fences or guardrails as referenced above are not required between work areas and pedestrian walkways, roadways or occupied buildings. Barricades shall be secured against accidental displacement and shall be maintained in place except where temporary removal is necessary to perform the work. When a barricade is temporarily removed, a watchman shall be placed at all openings.
12. Fuel-burning types of lanterns, torches, flares, or other open-flame devices are prohibited.

#### 2.10 Authorization to Enter Construction Areas

- A. The Contractor shall take positive measures to control access to the construction areas. Unless specifically provided otherwise by contract, the Contractor shall fence the construction site and control access by gate. All workers on the site shall be readily identifiable by hard-hat and badge, and all persons without the



required identification shall be challenged immediately by all supervisory staff from foreman to supervisors.

- B. Only Trinity Metro construction management staff assigned to the site shall be unescorted. All other visitors will be cleared through the Trinity Metro Project Managers office and be specially badged and escorted for his or her visit. All others are to be challenged and referred to the Trinity Metro's Project Management Office.

#### 2.11 Construction Safety Inspection Report

- A. The Trinity Metro's "Construction Safety/Security Inspection Report" form is required for recording any unsafe conditions and/or acts noted. The form will primarily be used by the Contractor; however, Trinity Metro staff, and Insurance Administrator or Insurer personnel shall also use this form when inspecting the job sites.

The following instructions apply to the use of the form:

1. Number each item, beginning with #1 on each report.
  2. Print or write legibly with ballpoint pen, so that all copies are readable.
  3. Be specific under "Safety Violations." Descriptions such as, "Safety rails need repair" are adequate, but a better description would be, "Broken top rail in safety rail, 8' long at head of Smith Avenue escalator entrance needs repair." Give exact locations of safety violations. Violations that are not serious and are corrected immediately should be reported, but noted on the form as having been corrected.
  4. When unsafe conditions or unsafe acts are discovered that have the potential to cause bodily injury or property damage, the hazard should be classified as either "imminent danger or "serious." In either case immediate action should be taken to correct the hazard even before the hazard is reported as instructed in the Construction Safety Program.
  5. The last item in the column will indicate the abatement action and the deadline date, for example, "Repair or replace rail immediately. clean up accumulated trash, 9/27. Relocated flammable storage, 9/25."
- B. Inspections performed by Trinity Metro and the Contractors superintendent require the following:
    1. The person conducting the inspection must sign and date the form in the

space marked "Report Prepared By:" after the inspection is completed.

2. The violations or comments marked on the inspection report will then be reviewed with the Trinity Metro's representative.
  3. The Contractor's Superintendent, or authorized representative, will note in the "Contractors Corrective Action" column the corrective action that will be taken, such as, "Defective regulator will be removed from service this date." That person will then sign and date the report.
  4. Trinity Metro representatives will follow-up and ensure that the Contractors corrective action is completed as stated. If corrective action is not completed or is substantially delayed, the Trinity Metro will promptly notify the Contractors Superintendent.
- C. Inspections performed by the Trinity Metro representative require the following:
1. After the inspection is completed, the report form must be signed and dated in the space marked, "Report Prepared By," and reviewed with the contractor who will indicate the corrective action to be taken.
  2. A follow-up must be enacted to ensure corrective action is taken. Any undue delay or a failure to correct the hazard is reported to the Trinity Metro representative.

## 2.12 Noncompliance

- A. If the Trinity Metro Representative's will note any noncompliance with these safety requirements, or will be advised of any noncompliance by other Trinity Metro personnel, or by other governmental agency's with the authority to enforce safety regulations, and upon such notice the Trinity Metro representative shall perform the following:
1. Notify the Contractor of the noncompliance and of the corrective action required. This notice, when delivered to the Contractor or the Contractors representative at the site of the work, shall be deemed sufficient notice of the noncompliance to immediately implement corrective action.
  2. Exercise the right to issue a suspension of work order halting all or part of the work if the Contractor fails or refuses to take corrective action within the time specified in the notice. The order will remain in effect until satisfactory corrective action has been taken.

3. Deny any claim or request from the Contractor for equitable adjustment for additional time or money on any suspend-work order issued under these circumstances.
4. Require the removal from the Trinity Metro job site of any employee or piece of equipment that is deemed to be unsafe.

END OF SECTION

## SECTION 9 FEDERAL CONTRACT AND OTHER REQUIREMENTS

### 9.1 No Federal Government Obligations to Third Parties

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

1. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### 9.2 False Statements or Claims Civil and Criminal Fraud

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### 9.3 Access to Third Party Contract Records.

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

2. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

3. Where the Purchaser is a State and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
4. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
5. Where any Purchaser which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
6. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
7. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).  
FTA does not require the inclusion of these requirements in subcontracts.

#### **9.4 Changes to Federal Requirements.**

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

#### **9.5 Civil Rights (EEO, Title VI & ADA).**

1. *Nondiscrimination* - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. *Equal Employment Opportunity* - The following equal employment opportunity requirements apply

to the underlying contract:

*a. Race, Color, Creed, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, 'Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,' 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, 'Equal Employment Opportunity,' as amended by Executive Order No. 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

*b. Age* - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

*c. Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, 'Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,' 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### **9.6 Disadvantaged Business Enterprise**

Trinity Metro notifies all potential respondents that it will affirmatively ensure, in regard to any contract entered into pursuant to this request, that disadvantaged and/or women-owned business enterprises will be afforded full opportunity to submit bids in response to this request and will not be discriminated against on the grounds of race, religion, color, age, sex, disability, or national origin in consideration for an award. Trinity Metro has in place a Disadvantaged Business Enterprise (DBE) Plan. All potential respondents understand and agree that, upon award, pursuant to this IFB, the successful bidder will abide by and utilize Trinity Metro's DBE Plan in any transactions applicable to the plan.

#### **9.7 Incorporation of FTA Terms.**

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1F](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause The Fort Worth Transportation Authority to be in violation of the FTA terms and conditions.

## 9.8 Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and shall include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or bid, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Fort Worth Transportation Authority. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Fort Worth Transportation Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## 9.9 Termination Provisions.

**1. Termination for Convenience:** The Fort Worth Transportation Authority, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**2. Termination for Default:** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Fort Worth Transportation Authority may terminate this contract for default. The Fort Worth Transportation Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Fort Worth Transportation Authority.

**3. Opportunity to Cure:** The Fort Worth Transportation Authority in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 – 60 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Fort Worth Transportation Authority's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from The Fort Worth Transportation Authority setting forth the nature of said breach or default, the Fort Worth Transportation Authority shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Fort Worth Transportation Authority from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**4. Waiver of Remedies for any Breach:** In the event that the Fort Worth Transportation Authority elects

to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the Fort Worth Transportation Authority shall not limit the Fort Worth Transportation Authority's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

### **9.10 Disputes**

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Fort Worth Transportation Authority's CEO/President. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the CEO/President. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Trinity Metro authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

**9.10.1 Performance During Dispute** - Unless otherwise directed by the Fort Worth Transportation Authority, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

#### **9.10.2 Claims for Damages**

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

#### **9.10.3 Remedies**

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Fort Worth Transportation Authority and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Texas.

#### **9.10.4 Rights and Remedies**

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Fort Worth Transportation Authority, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **9.11 Byrd Anti-Lobbying Amendment,**

31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] –

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required (Attachment C) by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee



of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Fort Worth Transportation Authority.

#### **9.12 Clean Air**

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

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

#### **9.13 Clean Water**

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

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

#### **9.14 Energy Conservation.**

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

#### **9.15 Recycled Products.**

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

#### **9.16 Buy America.**

**Buy America** - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A Proposer or offer or must submit to the FTA recipient the appropriate Buy America certification (Attachment B) with all Bids or offers on FTA-funded contracts, except those subject to a general waiver. Proposals or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Contractor is required to submit documentation of the origin of steel and iron products used by submitting ways bills monthly with pay requests.

#### **9.17 Davis- Bacon and Copeland Anti-Kickback Acts**

49 U.S.C. § 5333(a)

40 U.S.C. §§ 3141 – 3148

29 C.F.R. part 5

18 U.S.C. § 874

29 C.F.R. part 3

Applicable to: Construction contracts over \$2000.

#### **Background and Application**

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below. The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the

Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each

classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if

known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with

the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if

known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to

paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - FWTa shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, FWTa may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash

equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to FFTA for transmission to the Federal Transit Administration as requested. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at

less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract.

Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C.1001.

#### **9.18 Safe Operation of Motor Vehicles**

a. Distracted Driving, Including Text Messaging While Driving.

(1) Contractor and their subcontractors are encouraged 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 contractor, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the contract, or when performing any work for or on behalf of the contract;

(2) Contractor 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. Contractors are encouraged to include this provision in each subconsultant agreement.

b. Seat Belt Use.

Contractors and their subcontractors are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.

**9.19 Prohibition on certain telecommunications and video surveillance services or equipment.**

In accordance with 2 CFR 200.216, Trinity Metro is prohibited from purchasing certain telecommunications and video surveillance services or equipment. As such, Contractor agrees not to purchase any telecommunications and/or video surveillance services or equipment produced by the companies listed below or any subsidiary or affiliate of such entities for this contract. Fort Worth Transportation Authority is prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

**9.20 Domestic Preference.**

As appropriate and to the extent consistent with law, the Service Provider should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). Consistent with §200.322, the following items shall be defined as: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber



**SECTION 10 DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

Trinity Metro has a policy to involve Disadvantaged Business Enterprises (DBEs) to the maximum extent feasible in all phases of its procurement practices. Trinity Metro's DBE Program and Utilization forms are included in Section 9, Forms F2 & F3, DBE firms are encouraged to respond to this IFB, and joint ventures with DBE firms are also encouraged.

**DBE Goal for this Solicitation is: 20%**

**Policy Statement.** It is the policy of the Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

TO ATTAIN THESE POLICY OBJECTIVES, Trinity Metro HAS SET DBE SUBCONTRACTING GOALS FOR DBE SUBCONTRACT PARTICIPATION. EACH INVITATION FOR BID (IFB) OR INVITATION FOR BID (IFB) WILL SPECIFY WHAT THE DBE SUBCONTRACTING GOAL IS FOR THAT PROCUREMENT.

**DBE Obligation.** Trinity Metro and its contractors agree to ensure that DBEs as defined in 49 CFR Part 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, Trinity Metro and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the opportunity to compete for and perform contracts. Trinity Metro and its contractors shall not discriminate on the basis of race, color, religion, sex, age or national origin, in the award and performance of DOT-assisted contracts.

**Disadvantaged Business Enterprise (DBE)** DBEs are for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and control management and daily business operations.

African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans and women are presumed to be socially and economically disadvantaged.

Other individuals can be characterized as socially and economically disadvantaged on a case-by-case basis.

To participate in the program, a small business owned and controlled by socially and economically disadvantaged individuals must receive DBE certification from their relevant state or local transportation agency. *NOTE: this is not a federal certification and is not applicable to federal contracts.*

Irrespective of what the size standard is, a firm cannot exceed the size of \$20.41 million and still be seen as a *Small Business*. This size limit is periodically adjusted for inflation.

Trinity Metro is a member of a unified certification program administered by the North Central

Texas Regional Certification Agency (NCTRCA).

**Failure to achieve DBE contract goals.** If the contractor fails to carry out the contract utilizing at least the same percentage of DBE participation shown on its successful bid, the contract payments may be reduced at Trinity Metro's option as a liquidated damage, and not as a penalty, by the amount equal to the mathematical dollar difference between the total contract amount multiplied by the DBE percentage goal and the actual dollar amount of documented DBE participation in the contract. However, any authorized adjustment in the percentage of DBE participation approved by Trinity Metro may be substituted in this formula for the DBE percentage goal as originally established.

**Exception.** Where the contract will be for procurement of a standard manufactured item or other similar procurement not open to subcontracting opportunities, and no certified DBE has submitted a bid, Trinity Metro may consider a bid which does not fully comply with the DBE requirements.

Trinity Metro has a written document that fully describes its DBE policy and program. The document is available upon request from Trinity Metro DBE Administrator, 801 Grove Street, Fort Worth, Texas 76102.

**DBE ASSISTANCE ORGANIZATIONS** Trinity Metro has provided a list of DBE firms in Exhibit B. For additional assistance in identifying qualified DBE firms, you can also contact one of the organizations below:

Fort Worth Transportation Authority  
ATTN: Contract Administration and Procurement  
801 Grove Street  
Fort Worth, Texas 76102  
(817) 215-8760  
[contractmgmt@ridetm.org](mailto:contractmgmt@ridetm.org)

North Central Texas Regional Certification Agency  
624 Six Flags Drive Suite # 216  
Arlington, Texas 76011  
(817)640-0606  
(817) 640-6315 (fax)  
[www.nctrca.org](http://www.nctrca.org)

**Technical Assistance** Provided by:  
Tarrant County Asian American Chamber of Commerce  
1818 E. Pioneer #100  
Arlington, Texas 76010  
(817) 797-9144

Fort Worth Metropolitan Black Chamber of Commerce  
1150 South Freeway, Suite 211  
Fort Worth, Texas 76104

(817) 531-6538  
(817) 332-6438 FAX  
[www.fwmbcc.org](http://www.fwmbcc.org)

Dallas Forth Worth MBDA Business Center  
8828 N. Stemmons Freeway, Ste 550 B  
Dallas, TX 75247  
United States  
214-920-2436

Texas Unified Certification Program [www.dot.state.tx.us/business/tucpinfo.htm](http://www.dot.state.tx.us/business/tucpinfo.htm)  
Fort Worth Hispanic Chamber of Commerce  
1327 North Main Street  
Fort Worth, Texas 76106-8576  
(817) 625-5411  
(817) 625-1405 FAX  
[www.fwhcc.org](http://www.fwhcc.org)

American Indian Chamber of Texas  
11245 Indian Trail  
Dallas, Texas 75229  
972-241-6450

Fort Worth Business Assistance Center (BAC)  
1150 South Freeway  
Fort Worth, Texas 76104  
(817) 871-6006  
(817) 871-6031 FAX  
[www.fwbac.com](http://www.fwbac.com)

### **COMPLIANCE REQUIREMENTS**

Compliance with the DBE Policy and Program of Trinity Metro is essential in order for a Bidder to be eligible for the contract under this solicitation. Compliance consists of: (a) meeting or exceeding the DBE percentage participation goals established for this solicitation; or (b) demonstrating good faith efforts to meet such participation goals; or (c) demonstrating that the solicitation comes within the exception to the DBE percentage participation goals as being a procurement for a standard manufactured item, or other similar procurement not open to sub-contracting opportunities.

In order to demonstrate compliance through its "good faith efforts" to obtain the DBE percentage participation goals, a Bidder must submit with its bid sufficient information to enable Trinity Metro to determine that the efforts made by the Bidder to obtain DBE participation were such efforts that a Bidder actively and aggressively sought to meet the goals. Actions or efforts which are merely "pro forma" or "going through the motions" do not constitute good faith efforts to obtain the participation of DBEs. Similarly, even efforts which are sincerely motivated but which,

given all circumstances relevant to the particular solicitation, could not be reasonably expected to produce a level of DBE participation sufficient to meet the goal do not constitute good faith efforts. In determining whether a Bidder has made a good faith effort to obtain the DBE participation percentage goal, Trinity Metro will not only look at the kinds of efforts that the Bidder has made, but also the quality and intensity of these efforts.

To assist Trinity Metro in making the required judgment concerning fulfillment of good faith efforts, the Department of Transportation has prepared a list illustrating the kinds of actions which would indicate that a Bidder has made a good faith effort. These kinds of efforts include:

- (i) Bidder attended pre-bid meetings scheduled by Trinity Metro to inform DBEs of contracting and subcontracting opportunities;
- (ii) Bidder selected portions of the work to be performed by certified DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
- (iii) Bidder advertised in general circulation, trade association, and/or minority focus media concerning the sub-contracting opportunities;
- (iv) Bidder provided written notice to a reasonable number of specified DBEs that their interest in the procurement was being solicited, in sufficient time to allow such DBEs to participate effectively;
- (v) Bidder followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
- (vi) Bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the solicitation;
- (vii) Bidder negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on their investigation of the capabilities;
- (viii) Bidder made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by Trinity Metro or the Bidder as prime Contractor;
- (ix) Bidder effectively used the services of available minority community organizations; minority contractor groups; local, state and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs (such as those DBE Assistance Organizations listed above).

This is not intended to be an inventory or checklist. DOT does not require Trinity Metro to insist that any Bidder do any particular one or any combination of the items on this list. It is not intended to be an exclusive or exhaustive list of all actions a Bidder, acting in good faith actively and aggressively seeking to obtain DBE participation would make. Other types of efforts or factors

may be relevant in appropriate cases.

### **COMPLIANCE DOCUMENTATION**

In order to demonstrate compliance with Trinity Metro DBE Policy and Program it is essential that full documentation be submitted at the time of the bid. This documentation consists of completion of the relevant statements appearing on Section 11 of this IFB packet, and attaching additional relevant documentation and information where specified.

Trinity Metro DBE COMPLIANCE STATEMENT and Trinity Metro SCHEDULE OF DBE UTILIZATION must be completed by all Bidders. Trinity Metro GOOD FAITH EFFORT DOCUMENTATION must also be completed by a Bidder who does not meet the DBE percentage participation goals established for this procurement but who wishes to show that it complies with the policy and program because of having made "good faith efforts" to meet those goals.

Bidders who believe that bid meets the exception to the DBE Policy and Program as being one for the procurement of a standard manufactured item or other similar procurement not open to sub-contracting opportunities must, in addition, fully explain the facts on which it bases its belief that this solicitation meets the terms of that exception. Some space at the bottom of the DBE Compliance Form (above the signature lines entitled "Exception Information") has been provided for exception information. If additional space is needed to provide complete exception information, please attach additional sheets titled "DBE Compliance Statement Exception Information."

### **COUNTING PARTICIPATION TOWARD MEETING DBE GOAL**

DBE participation shall be counted toward meeting goals set in accordance with DOT's DBE regulations at 49 CFR Part 26 and Trinity Metro's program as follows:

- (i) Once a firm is determined to be a certified DBE in accordance with the provisions specified in this program, the total dollar value of the contract or subcontract awarded to it is counted toward the applicable goal, if the contract is a fixed price contract. For other types of contracts, only actual payments to the certified DBE will be counted toward the applicable goal.
- (ii) Trinity Metro or the contractor employing a certified DBE firm may count toward its goals a portion of the total dollar value of a contract with a joint venture eligible under the DBE eligibility criteria specified herein equal to the percentage of the ownership and control of the certified DBE partner in the joint venture.
- (iii) Trinity Metro or a contractor will count toward its goal only expenditures to certified DBEs that perform a commercially useful function in the work of a contract. A certified DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a certified DBE is performing a commercially useful function, Trinity Metro or a contractor shall evaluate the

amount of work subcontracted, industry practices, and other relevant factors.

(iv) Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to rebut this presumption to Trinity Metro. Trinity Metro's decision on the rebuttal of this presumption is final, subject to review by the Department of Transportation in instances of DOT-assisted contracts.

(v) Trinity Metro or a contractor may count toward its DBE goals expenditures for materials and supplies obtained from certified DBE suppliers and manufactures provided that the DBEs assume the actual and contractual responsibility for the provision of the materials and supplies. Trinity Metro or a contractor may count its entire expenditure to a certified DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale). Trinity Metro will count 60 percent of its expenditures to certified DBE suppliers that are not manufacturers, provided that such suppliers perform a commercially useful function in the supply process.

## SECTION 11 SAFETY, SECURITY AND EMERGENCY REQUIREMENTS

Site visitors, to include contracted individuals providing services to Trinity Metro are required to comply with the following safety, security, and/or emergency guidelines:

- All providers will meet federal, state, and local regulatory guidelines related to safe practices and/or are related to safety in order to avoid hazards, potential hazards, and/or damage to Trinity Metro property.
- Contractors and Vendors are responsible for their equipment and personnel.
- In the event of an emergency, site visitors shall follow emergency response best practices; each provider should have an emergency plan. As needed, Trinity Metro designee(s) may need to review an emergency plan for acceptance. This will depend on the area work is being conducted. Designated rallying points may be provided by Trinity Metro representatives, so please ask and include in any Job and/or Safety Briefings to be prepared in the event of an emergency evacuation.
- Contractor and vendor providers are required to notify a Trinity Metro representative, a.k.a. point of contact, after any emergency events. This may be the Procurement Department representative or designated project lead. Alternatively, Trinity Metro's Operations Radio Control Center, or Security Center shall be notified as is deemed necessary, when reporting security or safety-related events requiring Trinity Metro response. Site visitors conducting work on Trinity Metro property should know whom to notify prior to commencement of work on Trinity Metro property.
- Vendors, Contractors, and Sub-Contractors working within any Bus Lot, Train Station, and/or Transit Center are required to provide scope of work being performed to the appropriate Trinity Metro designee so details for coordinating with revenue service vehicles (trains, buses, cutaways, and vans) paths and schedules will not disrupt any transit service.
- Trespassing and/or unauthorized site work is prohibited. This is especially more significant whenever the need arises to be within 25 feet of any railroad track rail unless on public right away such as platforms or grade crossings. Roadway Worker Protection requirements per federal law (49 CFR Part 214) may require successful completion of training and authorized access. Disruptions to commuter passenger railroad operations is unacceptable and may be subject to federal fines.
- Depending on the nature of the work being performed, Trinity Metro may require submission of a safety plan, security plan, and/or emergency plan subject to review and acceptance by the Chief Safety Officer or Director of Security or other designee.
- In the event of an accident or incident resulting in harm to an individual or damage to Trinity Metro property, a safety stand down may be required. Accordingly, when deemed necessary, corrective action and preventive measures(s) subject to approval or acceptance by the Chief Safety Officer or Director of Security or other designee may be required prior to resuming work on behalf of Trinity Metro or on Trinity Metro property.

- Larger scale projects and procurement of equipment may deem it necessary to comply with Safety and Security Certification Program requirements.
- Questions regarding safety, security, and/or emergency requirements may be directed to Trinity Metro's Procurement designee or lead Project Manager.



**SECTION 12 ATTACHMENTS AND FORMS**

**THE FOLLOWING FORMS AND CERTIFICATIONS SHALL BE COMPLETED BY BIDDER AND SUBMITTED WITH BID, AS SPECIFIED IN SECTION 1 MINIMUM REQUIREMENTS.**

**F1 - Attachments and Amendments**

**F2 - DBE Compliant Statement**

**F3 - Schedule of DBE Utilization**

**F4 - Good Faith Effort Documentation**

**F5 - Good Faith Effort Information Requests**

**F6 - Certification of Contractor Regarding Debarment, Suspension, and Other Responsibility Matters**

**F7 - Conflict of Interest Acknowledgement and Certification**

**F8 - Certification of Compliance with Restriction on Lobbying**

**F9 - Buy America Certification**

**F10 - Business Questionnaire & List of References**

**F11 - List of References for Similar Projects**

**F12 - Affidavit of Non-Collusion**

**F13 - Prohibition of Contracts with Companies Boycotting Israel**

**F14 - Trinity Metro Safety, Security and Emergency Requirements**

**F15 - Bid Form**

**Note: Failure to complete and return the forms as indicated above will result in rejection of the bid/proposal. The making of a material misrepresentation of fact could be a basis for disqualification and may cause a firm to be considered for classification as an irresponsible contractor and barred from the Trinity Metro work for a period not exceeding six months.**

**F1 - ATTACHMENTS AND AMENDMENTS**

The undersigned acknowledges receipt of attachments and amendments for The Fort Worth Transportation’s solicitation ***IFB 23-T026 Trinity Lakes Station Parking Lot Construction. Please list each of the attachments and amendments.***

Failure to acknowledge receipt of all attachments and amendments may cause bidder/proposer to be considered nonresponsive to the solicitation.

ATTACHMENTS:

ADDENDUMS:

Acknowledged receipt of each attachment and amendment must be clearly established and included with the bid/proposal response.

<i>Authorized Signature</i>	<i>Name of Company</i>
<i>Printed Name and Title</i>	<i>Date</i>

**F2 - DBE COMPLIANCE STATEMENT**

Check the statement below that applies to your submittal.

           **1. Bid meets or exceeds DBE percentage participation goal established for this procurement.** You must submit the Schedule of DBE Utilization with bid. If you are a certified DBE, complete the first set of questions on Schedule of DBE Utilization for yourself and submit DBE certification number. Submit DBE certification numbers for each DBE you intend to use.

           **2. Bid does not meet the DBE percentage participation goal established for this procurement, but we have made bona fide good faith efforts to reach those goals.** If this statement applies, you must submit the Schedule of DBE Utilization and the DBE Good Faith Effort Documents, along with bid, together with all other documentation of good faith efforts which you wish Trinity Metro to consider in evaluating your bid. Only documentation submitted with bid will be considered. Submit DBE certification numbers for each DBE you intend to use.

           **3. Bid does not have any DBE percentage participation for this procurement, but we believe this procurement meets the following exception to Trinity Metro’s DBE Policy:**

*“This solicitation is for the procurement of a standard manufactured item or other similar procurement with no subcontracting opportunities.”*

Firm should check “Yes” or “No” to both questions below and then explain in the exception information area below. Failure to provide an explanation may render the bid non-responsive (Subcontracting opportunities include things such as: delivery, assembly, installation, painting, suppliers, etc. Supplies are items purchased specifically for this procurement, other than the standard manufactured item requested by the invitation for bid).

Will you perform this entire contract without subcontractors?  Yes  No

Will you perform this entire contract without suppliers?  Yes  No

If you answered “no” to either question above, please fully explain why you are seeking the exception. The existence of subcontractor and supplier opportunities usually indicates that option # 2 and the Good Faith Effort Documents apply.

Exception Information (attach additional sheets, titled “Exception Information”, if needed):

<b>Authorized Signature</b>	<b>Name of Company</b>
<b>Printed Name and Title</b>	<b>Date</b>

Note: Failure to complete and return the DBE forms as indicated above, will result in rejection of the bid. The making of a material misrepresentation of fact could be a basis for disqualification and may cause a firm to be considered for classification as an irresponsible contractor and barred from Trinity Metro’s work for a period of not exceeding six months.

**F3 - SCHEDULE OF DBE UTILIZATION**

List all DBE’s expected to participate in performing the contract resulting from this solicitation. If you have no DBE participation, but you are subcontracting a portion of this procurement (i.e., work, deliveries, transportation, parts and supplies, etc.), then sign and date this form below and completely and thoroughly fill out and sign the Good Faith Effort Documents.

Note: Any firm listed below must be certified by the NCTRCA and/or listed on Trinity Metro Texas TUCP web site and their corresponding certification number should be listed.

Note: If Prime Contractor is a certified DBE, complete first section below for “self”.

Name of DBE Subcontractor of DBE Prime Contractor	
Address & Telephone Number	
Subcontracting Tier:	Type of Work to be Performed:
Dollar Amount for Work: \$	DBE Certification #:
Name of DBE Subcontractor of DBE Prime Contractor	
Address & Telephone Number	
Subcontracting Tier:	Type of Work to be Performed:
Dollar Amount for Work: \$	DBE Certification #:
Name of DBE Subcontractor of DBE Prime Contractor	
Address & Telephone Number	
Subcontracting Tier:	Type of Work to be Performed:
Dollar Amount for Work: \$	DBE Certification #:

The undersigned will enter into a formal agreement with DBE Subcontractors for work listed above in this schedule, conditioned upon execution of a contract with The Trinity Metro.

<i>Signature</i>	<i>Title</i>	<i>Date</i>

**F4 - GOOD FAITH EFFORT DOCUMENTATION**

If the bidder did not meet or exceed the Trinity Metro's DBE subcontracting goal, then the bidder must comply with the Trinity Metro's DBE policy by documenting that good faith efforts were made. Please check "Yes" or "No" below if you have completed the good faith effort form, attached any related support documents, and provided any additional information/support/clarification beyond that requested in the good faith effort documents. Providing additional information is the bidder's responsibility to ensure that sufficient information is provided to the Trinity Metro, so that good faith efforts can be comprehensively evaluated.

We (bidder) have: \_\_\_\_\_ Yes \_\_\_\_\_ No

\_\_\_ Completely filled out this good faith effort form with signature and date.

\_\_\_ Attached any related supporting documents, and also

\_\_\_ Provided any additional information and/or documents that we deemed necessary to support and/or clarify the good faith efforts that we made.

It is the bidder's responsibility to correctly, accurately, and substantively provide all necessary information to Trinity Metro, at Trinity Metro time of bid submission. The information provided by the bidder must be sufficient enough for Trinity Metro to determine that the efforts made by the bidder to obtain DBE participation were such efforts that a bidder actively and aggressively seeking to meet those goals would make. Actions or efforts which are merely "pro forma" or "going through the motions" do not constitute good faith efforts to obtain the participation of DBE's. Trinity Metro will look at the kinds of efforts the bidder has made, as well as the quality and intensity of those efforts.

This information will then be evaluated by Trinity Metro's DBE Liaison or a designee of the Trinity Metro for good faith effort compliance. Failure to comply will render the bid non-responsive.

Note: The DOT does not require Trinity Metro to insist that any bidder do any particular one or any combination of the items requested in DBE forms. It is not intended to be an exclusive or exhaustive list of all actions a bidder, acting in good faith, actively and aggressively seeking to obtain DBE participation would make. Other types of efforts or factors may be relevant in appropriate cases.

**F5 - GOOD FAITH EFFORT INFORMATION REQUESTS**

1. Please list each and every subcontracting and/or supplier opportunity which will be available in the completion of this project, regardless of whether it is to be provided by a DBE or non-DBE (use additional sheets, if needed).

Subcontracting Opportunities		Supplier Opportunities	
1.		1.	
2.		2.	
3.		3.	
4.		4.	
5.		5.	
6.		6.	
7.		7.	
8.		8.	
9.		9.	
10.		10.	
11.		11.	
12.		12.	
13.		13.	
14.		14.	
15.		15.	

(Bidder may make as many copies of this page as needed).

**Type an X in the Yes or No Box provided**

2.	Did you obtain a list of DBE firms from the Trinity Metro’s DBE Department (a list may or may not have been included with the Invitation for Bid or Proposal). If one was not included, or if additional lists are needed, they can be obtained from the DBE Department upon request.	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
3.	Did you attend the pre-bid conference(s) scheduled by the Trinity Metro? Date of Pre-Bid Meeting: <input type="text"/>	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
	Did you request bids from DBEs that also attended the pre-bid conference?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
DBE Firm/Person Contacted?			
4.	Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number 1. above by mail?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
5.	Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you	YES	<input type="checkbox"/>

	listed previously on question number 1. by fax?	NO	<input type="checkbox"/>
6.	Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number 1. above by telephone?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
7.	Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number 1. above by some other means?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
	If yes, please explain:		
8.	Did you advertise in local newspapers?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
	If yes, then please attach a copy(s) of advertisements, with the date advertised and list the specific newspapers that were used.		
9.	Please provide the following information for every DBE firm that you contacted by any method or that initiated contact with you, but will <i>not</i> be used on this contract:	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
a.	Attach a listing of every DBE firm that you solicited a bid from or that initiated contact with you to ask about and/or submit an unsolicited bid to you and include their mailing address, phone and fax numbers, the date that solicitations were sent, and the method that the solicitation was sent (i.e., mail, fax, phone, personal contact, etc. . .) and please provide a DBE contact name, if you have one.		
b.	Indicate the subcontracting area(s) that you solicited bids on from each DBE firm and/or the subcontracting area(s) for which each DBE firm submitted a bid to you, if different from what you solicited.		
c.	If DBE firms submitted bids, but those bids were rejected, provide an explanation for rejecting those bids and attach documentation to support the reason for rejecting the bid (i.e., letters, memos, DBE bid amount, telephone notes, meeting notes, etc.).		
d.	If a DBE firm bid was rejected because of price, then list the DBE firm's bid price and the name and bid price of the subcontractor or supplier that you will use in lieu of the rejected DBE firm.		
e.	Indicate the number of times that follow-up contact was made with DBE firms after the initial solicitations of interest.		
10.	Did you contact all DBE firms that you solicited bids from in a timely manner such that the DBE firms had at least 10 days prior to the bid submission date to prepare and submit a bid to you?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
	If NO, please explain:		
11.	Did you negotiate in good faith with interested DBE firms by, for instance, providing timely information regarding plans and specifications, breaking down subcontracts into economically feasible units to facilitate DBE participation, maintaining accessible lines of communications, etc.?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
12.	Did you assist interested DBE firms in obtaining bonding, lines of credit, or insurance required by the Trinity Metro or by you as prime contractor?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>

**ADDITIONAL INFORMATION**

Please provide any additional information and/or documents that you (the bidder) deem necessary to support and/or clarify that you made good faith efforts to meet the DBE subcontracting goal (be sure to attach any support documents).

Signature:

Date:

Name / Title:

**F6 - CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The potential contractor for Trinity Metro contract (hereinafter "PRIMARY PARTICIPANT"), \_\_\_\_\_ certifies to the best of its knowledge and belief, that it and its principals:

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

(If the primary participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification)

THE PRIMARY PARTICIPANT CERTIFIES OR AFFIRMS TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS ON 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature:		Date:	
Name / Title:			
Company Name:			

**Primary participant is required to secure from every subcontractor this same certification and shall submit such to TRINITY METRO prior to such subcontractor's commencing work under this contract. Contractor may make as many copies of this schedule as needed for certification by all subcontractors.**





(If the subcontractor is unable to certify to any of the statements above in this certification, the subcontractor shall attach an explanation to this certification)

THE UNDERSIGNED SUBCONTRACTORS FOR TRINITY METRO, CERTIFY OR AFFIRM AS TO ITSELF AND ITS PRINCIPALS TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SET OUT ABOVE AND SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTAND THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE TO THIS CERTIFICATION.

Signature:		Date:	
Name / Title:			
Company Name:			

Signature:		Date:	
Name / Title:			
Company Name:			

## F7 - CONFLICT OF INTEREST ACKNOWLEDGMENT AND CERTIFICATION

### 1. Policy

In order to promote fairness and impartiality in Trinity Metro's procurement process, involvement in any decision making role in the solicitation, or in the awarding or administration of a resulting contract by any Related Person who might receive some Benefit is prohibited. "Related Person" is defined as any employee, officer, Executive Committee member, or agent of Trinity Metro. "Benefit" is defined as any direct or indirect pecuniary, financial, or other tangible advantage, gain, promotion, or interest growing out of or related in any manner to the solicitation or to a contract or subcontract growing out of the solicitation. Such involvement of any Related Person is also prohibited when a person bearing certain relationship to the Related Person ("Other Related Person") may receive a Benefit. Such "Other Related Person" is defined as any member of a Related Person's immediate family (a spouse, child, parent, brother or sister), a partner of any Related Person, or any person or organization which employs or is about to employ a Related Person or Other Related Person. If a Related Person or Other Related Person will or may so benefit, a prohibited conflict of interest may exist.

### 2. Disclosures

Your obligation, as a prospective contractor under this solicitation, is to disclose fully all information you have or may acquire which has to do with any such Benefit which may come to any Related Person or Other Related Person. In considering the possibility of the existence of such benefit, you also need to consider each person and firm you believe may be involved as a joint venturer, or subcontractor, or other similar role in carrying out and performing a contract with Trinity Metro pursuant to the solicitation. In other words, if you are aware of any business, financial, or other interest, or actual or potential employment relationship between any Related Person or any Other Related Person, on the one hand, and yourself or any other person or firm you believe may be involved in carrying out the contract to be awarded pursuant to this solicitation, on the other hand, you have an affirmative obligation to fully disclose that information to Trinity Metro. You are encouraged to contact the Director of Contract Administration and Procurement or Trinity Metro's General Council prior to the deadline for submitting your Response (defined as a bid, proposal or other response to this solicitation), make such disclosure, and request a ruling as to whether any prohibited conflict of interest does in fact exist.

In order for your Response to be considered RESPONSIVE to this solicitation, it is mandatory that you complete and execute the Acknowledgment and Certification below, and include with your Response, written disclosure of all information relative to any potential conflict of interest which may be known to you, and which you have not disclosed to TRINITY METRO in writing prior to the submission of your Response.

### **ACKNOWLEDGMENT AND CERTIFICATION (Potential Contractor)**

The undersigned potential contractor of Trinity Metro hereby acknowledges receipt and understanding of the Conflict of Interest provisions set out above; and hereby certifies that, except as heretofore or herewith fully disclosed in writing, to the best of potential contractor's knowledge and belief, no such conflict exists, or is likely to exist in the future pertaining to this procurement should the contract be awarded to potential contractor; and potential contractor further hereby promises to promptly notify TRINITY METRO in writing if such knowledge or belief changes in the future.

**By:**

Signature:		Date:	
Name / Title:			

**ACKNOWLEDGMENT AND CERTIFICATION  
(Recommended Subcontractor)**

The undersigned recommended subcontractor of Trinity Metro hereby acknowledges receipt and understanding of the Conflict of Interest provisions set out above; and hereby certifies that, except as heretofore or herewith fully disclosed in writing, to the best of recommended subcontractor's knowledge and belief, no such conflict exists, or is likely to exist in the future pertaining to this procurement should the contract be awarded to recommended subcontractor; and recommended subcontractor further hereby promises to promptly notify Trinity Metro in writing if such knowledge or belief changes in the future.

**By:**

Signature:		Date:	
Name / Title:			

***Note: Bidder shall make copies of the Conflict of Interest document and Acknowledgment and Certification form and provide same to each subcontractor bidder recommends for the contract. Bidder is required to secure an acknowledgment and certification from each subcontractor bidder recommends and submit such certification to TRINITY METRO prior to a subcontractor beginning any work under this contract.***

**F8 - CERTIFICATION OF COMPLIANCE WITH RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_ (Name of certifying official), the \_\_\_\_\_ (Title or position of certifying official) of \_\_\_\_\_ (name of company), do hereby certify on behalf of said company to Trinity Metro that:

- (1) It will not use federal funds to support lobbying.
- (2) No federal funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any 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.
- (3) If any funds other than Federal 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 this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (4) *All subcontractors and sub-recipients shall certify and disclose accordingly.*  
This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. 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:

Signature:	Date:	
Name / Title:		

**Note: Bidder shall make copies of this blank page and obtain certification from all subcontractors that bidder is recommending, and submit such certifications to Trinity Metro prior to such subcontractors beginning any work under this contract.**

**F9 – BUILD AMERICA/BUY AMERICA CERTIFICATION**

Section 165 (a) of the Surface Transportation Act of 1982 permits FTA participation in this contract only if iron, steel and/or manufactured products used in the contract are produced in the United States. If the contract is for the procurement of buses, vans or other "rolling stock" as defined in 49 C.F.R. Part 661, the cost of components produced in the United States shall exceed 70% of the cost of all components, and final assembly shall take place in the United States. Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52 permits FTA participation in this contract if all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

Complete one of TRINITY METRO two certifications below if this contract is for the procurement of such rolling stock, or if steel and manufactured products are otherwise used in this contract:

1. The Proposer hereby certifies that it will comply with the requirements of Section 165 (a), Pub. L. No. 117-58, §§ 70901-52 (or the requirements of Section 165 (b)3 if this contract is for the procurement of "rolling stock") of the Surface Transportation Assistance Act of 1982 and the regulations in 49 C.F.R. 661.

Signature:		Date:	
Name / Title:			
Company Name:			

**OR**

2. The Proposer hereby certifies that it cannot comply with the requirements of Section 165(a), Pub. L. No. 117-58, §§ 70901-52 (or with the requirements of Section 165(b)3 if this contract is for the procurement of "rolling stock") of the Surface Transportation Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165(b) of the Surface Transportation Assistance Act and regulations in 49 C.F.R. 661.7. (Fully explain and document facts on which Proposer relies for its belief that it qualifies for exception).

Signature:		Date:	
Name / Title:			
Company Name:			

### F10 - BUSINESS QUESTIONNAIRE

This questionnaire, the requested list of references and the authorization to release financial information are used in part to assist in determining a potential contractor's responsibility. Bidder's shall submit the information with the offer. All information shall be current and traceable. Each venture of a joint venture shall submit a separate signed form.

Trinity Metro reserves the right to make additional inquiries based on information submitted, or the lack thereof. Questions concerning this questionnaire or the authorization form shall be directed to the contact person identified on the solicitation.

1. Legal Name of Bidder ("Business"):
2. List name(s) and business address of officers and directors for corporations, partners for partnerships, and ventures for joint ventures (attach additional pages as necessary):
3. Number of years in business under present business name:
4. If applicable, list all other names under which the business identified above operated in the last 5 years:
5. Annual Gross Revenue (past year): M=millions K=thousands
<input type="checkbox"/> \$100K - \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1M-\$10M <input type="checkbox"/> \$10M-\$20M <input type="checkbox"/> >\$20M
6. Has the business, or any officer or partner, failed to complete a contract? <input type="checkbox"/> Yes <input type="checkbox"/> No
7. Is any litigation pending against the business? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Has the business ever been declared "not responsible" for the purpose of any governmental agency contract award? <input type="checkbox"/> Yes <input type="checkbox"/> No
9. Has the business been debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise disqualified from bidding, proposing or contracting? <input type="checkbox"/> Yes <input type="checkbox"/> No
10. Are there any proceedings pending relating to the business' responsibility, debarment, suspension, voluntary exclusion or qualification to receive a public contract? <input type="checkbox"/> Yes <input type="checkbox"/> No

11. Has the government or other public entity requested or required enforcement of any of its rights under a surety agreement on the basis of a default or in lieu of declaring the business in default? _____ Yes _____ No
12. Is the business in arrears on any contract or debt? _____ Yes _____ No
13. Has the business been a defaulter, as a principal, surety or otherwise? _____ Yes _____ No
14. Have liquidated damages or penalty provisions been assessed against the business for failure to complete work on time or for any other reason? _____ Yes _____ No
15. Does the business maintain a drug-free workplace? _____ Yes _____ No
16. If a "yes" response is given under questions 6-14, provide a detailed explanation including dates, reference to contract information, contacts, etc. (attach additional pages as necessary):
17. Business Identification Number (EIN, etc.)
18. Provided completed <b>List of References for Similar Projects</b> form. _____ Yes _____ No

I, individually and on behalf of the business named in this Business Questionnaire, do by my signature below, certify that the information provided in this questionnaire is true and correct. I understand that any false statements or misrepresentations regarding the business named above may result in:

1. *Termination of any or all contracts which Trinity Metro has or may have with the business,*
2. *Disqualification of the business from consideration for contracts,*
3. *Removal of the business from Trinity Metro's bidders' list and/or*
4. *Legal action(s) applicable under federal, state or local law.*

Signature:		Date:	
Name / Title:			
Company Name:			

**F11 - LIST OF REFERENCES FOR SIMILAR PROJECTS**  
*(Use additional pages as necessary)*

<b>1. Project:</b>
Date of Completion (if applicable):
Company Name:
Address:
Contact Name:
Telephone Number:
E-Mail Address:
<b>2. Project:</b>
Date of Completion (if applicable):
Company Name:
Address:
Contact Name:
Telephone Number:
E-Mail Address:
<b>3. Project:</b>
Date of Completion (if applicable):
Company Name:
Address:
Contact Name:
Telephone Number:
E-Mail Address:
<b>4. Project:</b>
Date of Completion (if applicable):
Company Name:
Address:
Contact Name:
Telephone Number:
E-Mail Address:



**F12 - AFFIDAVIT OF NON-COLLUSION**

Each member of the proposing team (**prime and subs**) shall submit a signed and notarized Form 12 – Non-Collusive Affidavit.

THE UNDERSIGNED, HAVING SUBMITTED BID TO PROVIDE Bus and Van Batteries in response to IFB 23-T026 swear that said bidder, quoter, or proposer has not directly or indirectly entered into any combination, collusion, undertaking, or agreement relative to price to be bid by any person, or to prevent any person, or persons, or company from submitting pricing; or to entice any bidder, quoter, or proposer to refrain from pricing for such supplies, merchandise, service, or contract, and that said bid so made is without reference or regard to any other bid or bids, and without agreement, understanding or combination, either directly or indirectly, with any person or persons, with reference to such bidding in any way or manner whatsoever.

Signature:		Date:	
Name / Title:			
Company Name:			

STATE of \_\_\_\_\_

County of \_\_\_\_\_

This instrument was subscribed and sworn before me this \_\_\_\_ day of, \_\_\_\_\_, 20\_\_.

(Personalized Seal Below)

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
My Commission Expires (Date)

**Failure to properly Notarize and Return This Form with the Bid Will Invalidate Your Bid**

**F13 - PROHIBITION OF CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**  
(This form must be completed and submitted with the bid/proposal)

House Bill 89, effective September 1, 2017, amended the Texas Government Code to add Chapter 2270, Prohibition of Contracts with Companies Boycotting Israel.

Effective September 1, 2017, a state agency and a political subdivision (which includes a transportation authority) may not enter a contract with a company for goods or services unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract.

“Boycott Israel” is defined to mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

“Company” is defined to mean a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

---

I, \_\_\_\_\_ (Name of certifying official), the \_\_\_\_\_ (Title or position of certifying official) of \_\_\_\_\_ (name of company), do hereby verify on behalf of said company to Trinity Metro that said company does not Boycott Israel and will not Boycott Israel (as that term is defined in Texas Government Code Section 808.001) during the term of this contract.

Signature:		Date:	
Name / Title:			

**F14 - BID FORM**

TO BE ATTACHED WHEN CONVERT TO PDF

Exhibit A Davis Bacon to be added after convert to PDF as well as other Attachments and specifications

Also Add F-15 Plans and Specifications

electronic difficulties, or any other form of delivery service chosen by Respondent.

***Bids arriving late due to a delay in the delivery process will not be accepted.***

**3.3 Bid Requirements and Conditions:** Bidders should examine the entire IFB for all required documents to be included in the submitted bid package. The instructions below highlight some of the specific requirements, but are not all inclusive.

**a) Bid Form:** Bidder shall complete the Bid Form and submit with other documents identified in Section 1 – Minimum Requirements.

**b) Work Site:** The Proposer is expected to examine the site of the proposed work to be satisfied as to the character, quality and quantities of work to be performed, materials to be required and requirements of the proposed contract. The submission of the Proposal shall be prima facie evidence that the Proposer made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the proposed contract.

**c) Construction Schedule:** The Contractor shall complete work according to the milestone schedule outlined in Section 5 SP 003 Period of Performance in this document. Approximately 182 days from Notice to Proceed.

**d) Bonds:** Proposal bonds/Proposal Guarantee (see Special Provision SP007 for specific requirements), 5% of Price Proposal, shall be included with the Proposal package on the required day and time as described in SP007. Performance and payment bonds shall be submitted upon award of the contract and shall be free and clear of any encumbrances and submitted within ten days of receipt of the contract for signature.

**e) Disadvantaged Business Enterprise (DBE):** The DBE Goal for this Solicitation is 20%. Pursuant to the United States Department of Transportation's (USDOT) and the Federal Transit Administration's (FTA) Disadvantaged Business Enterprise (DBE) Program as specified in Title 49, Code of Federal Regulations, Part 26 (49 CFR Part 26), Bidder must comply with all relevant section of this Regulation and with Trinity Metro's DBE Program. Section 8 contains additional information regarding the DBE.

**Note: If Bidder is a DBE firm, then its self-performance will count towards the DBE Goal.**

**3.4 Response to Communications and Requests:** Trinity Metro will not respond to oral requests for bid questions/clarifications. Written requests should be submitted through Bonfire or will be acceptable by email identified below. Only written responses, from Trinity Metro, provided as addenda shall be official, and all other forms of communication with any officer, employee, or agent of Trinity Metro shall not be binding on Trinity Metro. Any responses to such written requests shall be provided by Trinity Metro in the form of an addendum.

Trinity Metro  
Attn: Pat Malone  
801 Grove Street  
Fort Worth, Texas 76102  
Email: [contractmgmt@ridetm.org](mailto:contractmgmt@ridetm.org)

***Bidders shall not contact members of Trinity Metro or Trinity Metro’s Board of Directors concerning this IFB. Any bidders violating this provision may be disqualified from consideration in this IFB.***

**By submission of a bid, proposal, offer, or quotation in response to this solicitation, the bidder agrees to submission of any dispute under this solicitation (or resulting contract) to procedures for protests and dispute resolution pursuant to Article 8 of Trinity Metro’s Procurement Policy.**

**3.5 Basis for Contract Negotiation:** This IFB and resulting bid shall be used as the basis for any potential contract negotiation.

**3.6 Exceptions to Any Portion of the Solicitation Requirements**

**a. Exceptions to IFB terms and conditions - Proposers are cautioned to limit exceptions, conditions, and limitations to the proposal documents as they may be determined to be so fundamental as to cause rejection of the proposal for not responding to the requirements of the IFB.**

**b. Exceptions taken to the terms and conditions of the solicitation, to any of its formal attachments or to other parts of the solicitation shall be clearly identified. Each exception shall be specifically related to each paragraph and/or specific part of the solicitation to which the exception is taken. Proposer shall provide rationale in support of the exception and fully explain its impact, if any, on the performance**

**3.7 Rejection of Bids:** Trinity Metro reserves the right to reject any or all bids. Issuance of this IFB does not bind Trinity Metro to award a contract, nor does Trinity Metro in any way assume liability for expense incurred by bidder in preparation of its bid.

**3.8 Requests for Clarification:** All requests for clarifications or changes shall be submitted in accordance with the Schedule of Events outlined in Section 2.

**3.9 Addenda and Attachments to IFB:** This Invitation for Bids (IFB) has been posted to the Trinity Metro Bonfire Portal as well as on the Trinity Metro’s website for your convenience. Any attachments, addendums, clarifications or further instructions to bidders, whether as a result of questions raised by bidders or initiated by Trinity Metro, if issued, will also be posted. It is the Bidder’s responsibility to ensure that the entire IFB package, in its latest version, is reviewed prior to submittal of a bid.

**3.10 Award Criteria:** The lowest responsive and responsible bidder whose bid is most advantageous to the Trinity Metro shall be selected to perform the services. A responsible bidder shall be able to perform all the services required in this IFB.

**3.11 Contract Award:** Trinity Metro reserves the right, as the interests of the Authority may require, to postpone, accept, or reject any and/or all bids, and to award the contract(s) to the lowest responsive and responsible bidder.

In awarding a contract(s), Trinity Metro reserves the right to consider all elements entering into the determination of the responsibility of the bidder. Any bid which is incomplete, conditional, obscure, or which contains additions not called for or irregularities of any kind, may be cause for rejection of the bid.

In the event a single bid is received, Trinity Metro will conduct a price and/or cost analysis of the bid. A price analysis is the process of examining and evaluating a price submitted without examining in detail the separate cost elements and the profit included in the bid. It should be recognized that a price analysis through comparison to other similar procurements shall be based upon an established or competitive price of the elements used in the comparison. The comparison shall be made to a purchase of similar quantity and involving similar specifications. Where a difference exists, a detailed analysis shall be made of this difference and costs associated thereto. Trinity Metro has the right to enter into a negotiated procurement should only a single bid be received.

Where it is impossible to obtain a valid price analysis, it may be necessary for Trinity Metro to conduct a cost analysis of the bid price.

This solicitation may result in the award of more than one contract.

**3.12 Proprietary Information:** If a bid includes proprietary data or information that the bidder does not want disclosed to the public, such data or information shall be specifically identified as such on every page on which it is found. Data or information so identified will be used by Trinity Metro solely for the purpose of evaluating bids and conducting contract negotiations. Disclosure of any proprietary information by Trinity Metro shall be in strict accordance with the laws and regulations regarding disclosure in the State of Texas.

**3.13 Cost of Bid Preparation:** The cost of preparing a response to this IFB, including site visits, will not be reimbursed by Trinity Metro.

**3.14 Disclosure of Interested Parties:** Section 2252.908 of the Texas Government Code states that Texas state agencies and other Texas governmental entities, such as the Trinity Metro, may not enter into certain contracts with a business entity unless the entity submits a "disclosure of interested parties" (Form 1295). The successful bidder must submit a completed, executed, and notarized Form 1295, with the certification of filing with the Texas Ethics Commission, when a contract is delivered to Trinity Metro for execution. Please refer to the information at the Texas Ethics Commission's website for

instructions on registering and completing Form 1295. Trinity Metro must notify the Texas Ethics Commission of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the contract binds all parties to the contract. The commission will post the completed Form 1295 to its website within seven business days after receiving notice from Trinity Metro. Trinity Metro will not execute the contract, and no agreement will be formed if Trinity Metro has not received the certification of filing.

### **3.15 Prohibition of Contracts with Companies Boycotting Israel:**

The Texas Government Code, Chapter 2271, creates a Prohibition of Contracts with Companies Boycotting Israel.

Effective September 1, 2019, a governmental entity (which includes a transportation authority) may not enter a contract for goods or services valued at \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity with a company with 10 or more full-time employees unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract.

“Boycott Israel” is defined to mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

“Company” is defined to mean a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. See Form F-13 attached.

**3.16 Davis-Bacon:** For construction projects costing over \$2,000; Davis-Bacon Wages Rate apply and Davis Bacon Certified Payroll must be submitted weekly. The current wage determination rates for this project are attached as Exhibit “A “. The recommended fillable Davis Bacon form WH347 for reporting purposes is also attached. Instructions for completing payroll WH347 and the fillable Davis Bacon WH347 payment form maybe found at: <https://www.dol.gov/agencies/whd/forms/wh347>

**3.17 FORCE MAJEURE:** Definition of Force Majeure: Acts of God; earthquake, unusually severe weather, flood and any other natural disaster; civil disturbance, strikes and labor disputes; fires and explosions; war and other hostilities; embargo; or failure of third parties, including Suppliers or Subcontractors, to perform their obligations to the Contractor due to a force majeure event described above.

Economic hardship, changes in market conditions, general supply chain issues, or insufficiency of funds do not constitute an Event of Force Majeure, and an Event of Force Majeure does not excuse an obligation to make a payment required under this Contract. Failure of third parties, including



Suppliers or Subcontractors, to perform their obligations to the Contractor, due to any reason other than a force majeure event described above, shall not constitute an Event of Force Majeure.

If Contractor cannot perform some of its obligations due to an Event of Force Majeure, it must nevertheless continuously and diligently carry out and complete all of its obligations not prevented by the Event of Force Majeure.

Notice of Delay. If Contractor is delayed in the performance of the Services due to an Event of Force Majeure or otherwise, Contractor must in a prompt manner upon receiving knowledge of such delay give written notice thereof to Trinity Metro and furnish Trinity Metro information concerning the cause of the delay and its approximate anticipated length and demonstrating, if applicable, that the delay is due to an Event of Force Majeure. Contractor's failure to provide such prompt written notice waives Contractor's right to invoke Force Majeure. For purposes of this paragraph, "prompt notice" shall mean as soon as reasonably practical but in no event more than thirty (30) days after the occurrence of the Event of Force Majeure.

Sole Relief. If an Event of Force Majeure occurs, provided Contractor has complied with all applicable notice requirements regarding a request for relief under this section, Contractor is excused from performance of its obligations under this Contract, but only for the time and to the extent that such performance is actually prevented by the Event of Force Majeure. When Contractor is able to resume performance of its obligations, it shall immediately give Trinity Metro written notice to that effect and promptly resume performance under this Contract. The relief offered by this Force Majeure provision is the exclusive remedy available to Contractor with respect to an Event of Force Majeure, and no claim for damages shall be made by the Contractor for delays resulting from an Event of Force Majeure.

Continuing Delays. Trinity Metro may terminate this Contract if:

Contractor's failure to perform under this Contract due to an Event of Force Majeure impairs the material benefits of this Contract to Trinity Metro; and

Contractor does not resume performance in accordance with this Contract within ten (10) business days following Trinity Metro's giving notice to Contractor of Trinity Metro's intent to terminate this Contract.

## SECTION 4 SCOPE OF SERVICES

### 1.0 Introduction/Background

The Fort Worth Transportation Authority dba Trinity Metro, one of the largest and most dynamic public transit systems in the state of Texas, providing service throughout Tarrant County Texas is soliciting bids from qualified contractors to provide construction of the Trinity Railway Express (TRE) Trinity Lakes Station Parking Lots.

The scope of work will consist of construction and related services as described in this Invitation for Bids (IFB #23-T026).

In 2016, the City of Richland Hills withdrew its membership from Trinity Metro. TRE Richland Hills Station will be closed and a new station, located 0.9 miles east of the existing station, will be constructed within the City of Fort Worth limits. Trinity Lakes transit-oriented development, a 1,600-acre master planned community, will be constructed around the new station, including an access road and utilities from Trinity Boulevard.

Trinity Metro is responsible for construction of the new Trinity Lakes Station double side platform passenger station, including track realignment, new siding, turnouts, signal, and communication modifications. The station and track work is under contract and in progress. Trinity Metro is also responsible for constructing 2 new parking lots consisting of 500 spaces including subgrade preparation, concrete paving, inlet and storm sewer installation, landscaping and irrigation, lighting, security camera installation.

### 3.0 Description/Scope of Work

Construction of the Trinity Lakes Station Parking Lots shall include but not be limited to:

#### **3.1 Site work Construction**

SW3P and Site Preparation

Clearing and Grubbing

Subgrade preparation

Concrete paving (parking lots, sidewalks, and ramps)

Storm Sewer

Lighting

CCTV Cameras

Electrical and Communication Utilities

Pavement Markings & Signage

Irrigation

Landscaping

#### 4.0 Schedule

The contractor shall complete work according to the milestone schedule outlined in Section 5 SP003 Period of Performance in this document. Approximately 155 days from Notice to Proceed.

#### 5.0 Special Requirements

##### Construction Permits

The Contractor shall be responsible for obtaining all construction permits.

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**SP 000 Selection Procedure**

- a. Bids received after date and time specified in Section 2.0 are not eligible and shall not be considered for award of contract.
- b. Award of contract shall be made to the lowest responsive, responsible Bidder whose Bid Documentation is compliant with the IFB requirements. Notwithstanding any other provision of this IFB, Trinity Metro Board of Directors expressly reserves the right to:
  - Waive any immaterial defect or informality, or
  - Reject any or all Proposal Documentations, or
  - Reissue a Request for Proposal Documentation, or
  - Cancel the Request for Proposal.

**SP 001 Contract Type**

This is a firm fixed price Contract. Contractor shall perform and complete the Work in accordance with the terms and conditions and for the price stipulated in the Contract.

**SP 002 Definitions**

Capitalized terms in these Special Provisions shall have the meanings as they are defined in the General Provisions.

**SP 003 Period of Performance**

All work required under this Contract shall be completed on or before the milestones set forth below and shall be incorporated into the Construction Schedule and monthly schedule updates. There is one contract milestone and it must be achieved by the respective milestone date.

**1. Milestone A - Completion and Final Acceptance of All Work by the Authority (155 after NTP)**

The Contractor shall complete all Work and achieve Authority acceptance of the Work on or before the associated finish date shown below. Completion means completed all Work, turned over to the Authority and accepted by the Authority. Completion includes, but is not limited to, all physical work complete; no non-conforming work, deficiencies, failed tests, submittals or other requirements outstanding; cleaned up and with all Contractor equipment and materials removed; all inspections and testing successfully complete and submitted to the Authority; certificates of occupancy received; As-Built submission and approval by the Authority, and in all ways ready for Authority use in the manner and to the standards the Authority intended in accordance with all contract requirements.

**SP 004 Liquidated Damages**

Contractor shall pay to Trinity Metro the sums set forth below for each calendar day of delay in completion of the Work within the time established in the contract. Any liquidated damages assessed shall be cumulative. These Liquidated Damages are a reasonable estimate of potential damages to Trinity Metro which are uncertain at this time and could be uncertain at the time such damages would be incurred. Should the amount of liquidated damages exceed the amount owed to Contractor on the Contract, Contractor is required to pay those excess liquidated damages to Trinity Metro.

Liquidated damages shall be assessed in the amount of \$1,400.00 for each calendar day of delay for Contractor's failure to achieve Milestone A.

**SP 005 Coordination with Other Contracts**

In accordance with the General Provisions, Contractor has an express obligation and duty to coordinate its work with the work of other contractors if applicable.

Contractor shall not impede, hinder or delay Trinity Metro or any other contractor in performance of its work. It is Contractor's duty under this Contract to communicate with any contractor who will be performing work, which may connect, complement, interfere with or in any manner impact Contractor's Work and to resolve any disputes or coordination problems directly with such contractor(s).

**5.1 Private (Franchise) Utility Coordination**

Contractor shall schedule and coordinate the Work with private utilities and their contractors working in the area during the Project construction period. Information about what private utility contractors are scheduled to be performing work in the project area can be obtained from the relevant utility company.

Contractor is responsible for notifying utility companies, in writing, a minimum of thirty (30) calendar days prior to commencing any work effort affecting the utility unless the utility company's policies require earlier notification. Contractor shall reconfirm with the utility company by telephone forty-eight (48) hours prior to beginning Work or in accordance with the utility company's notice provisions.

**5.2 Municipal Utility Coordination**

Contractor shall schedule and coordinate the Work with municipal utilities and the municipality's contractors. Trinity Metro is willing to help in the coordination with the municipality but any assistance provided does not relieve Contractor of its obligation to coordinate and schedule its Work with the affected utility.

Contractor is responsible for notifying utility companies, in writing, a minimum of thirty (30) calendar days prior to commencing any work effort affecting the utility unless the utility company's policies require earlier notification. Contractor shall reconfirm with the utility company by telephone forty-eight (48) hours prior to beginning Work or in accordance with the utility company's notice provisions.

**SP 006 Binding Contract Criteria**

The criteria specified in the Invitation to Bid (IFB) are binding Contract criteria. If, after award, a conflict is discovered between the IFB requirements and Contractor's Proposal, the IFB criteria shall govern. The only exception to the previous sentence would be if there is a written and signed agreement between Contractor and Trinity Metro waiving a specific requirement.

**SP 007 Proposal Bond/Guarantee**

No Proposals will be considered unless they are accompanied by a Proposal guarantee reasonably acceptable to Trinity Metro in the form of a Proposal bond from a surety reasonably acceptable to Trinity Metro and the U.S. Government, cashier's or certified check payable to Trinity Metro, in the amount of five percent (5%) of the Proposal amount ("Proposal Guarantee"). Failure to include the required Proposal Guarantee in the Proposal may be cause for rejection of the Proposal. The entire Penal Sum, as defined in the Proposal Guarantee, shall be paid to **Fort Worth Transportation Authority** as fixed and liquidated damages if the Contract is awarded to Contractor and Contractor fails promptly and properly to execute the Contract and to provide any required bonds within the 30 days following the receipt of draft contract. If the Proposal Guarantee is a surety bond, then it must be held in place for 120 calendar days from the date Contractor's Proposal is opened.

**Performance Bond (100%) and Payment Bond (100%) will be required upon contract execution.**

**SP 008 Exchange of Information**

Exchanging information between Trinity Metro and Contractor is necessary throughout the construction process to improve the understanding of TRINITY METRO's requirements and industry capabilities to assist Contractor in satisfying the Contract requirements and to promote reasonable pricing and increase Project efficiency. Trinity Metro and Contractor agree to meet on regular intervals to promote the exchange of information to further these goals.

**SP 009 Goals for Disadvantaged Business Enterprises**

Contractor shall be required to demonstrate a commitment to disadvantaged business enterprises participation in the Project. **DBE Goal for this Solicitation is: 20%**. Contractor will be required to use its best efforts, in good faith and on a reasonable basis, to achieve and to maintain the goal throughout the construction of the Project.

**SP 010 Competition in Subcontracting**

Contractor shall select Subcontractors and Suppliers on a competitive basis to the maximum extent practicable, consistent with the objectives and requirements of the Contract.

**SP 011 Performance of Work by Contractor**

Unless such a description has been submitted with this Proposal, the successful Proposer must furnish the Contract Administrator, within 5 days after award, a description of the work which it intends to perform with its own organization (e.g., earthwork, paving, drainage, lighting, or

utilities), the percentage of the total work this represents, and the estimated cost thereof.

**SP 012 General Wage Determinations (Davis-Bacon Act)**

- 12.1 Contractor and all Subcontractors are obligated to pay their employees minimum wages as identified for federally assisted construction projects pursuant to the prevailing wage provisions of the Davis-Bacon Act, as amended. "General Decision Number TX20230025," outlines the minimum wages and fringe benefits to be paid to trades and craftsmen employed by Contractor and all Subcontractors, while performing Work on the Work Site. Contractor and all Subcontractors shall not withhold from, or require any employee to return any portion of the prevailing wages and fringe benefits paid for Work performed at or on the Work Site, except for federal, state, and local taxes and FICA taxes. (This does not preclude voluntary employee withholding for pension plans, retirement plans, savings plans, 401(K) plans, etc. Such voluntary plan deductions will also be subject to audits by Trinity Metro to determine that they are bona fide deductions and not returns to Contractor or its Subcontractors).
- 12.2 Contractor and its Subcontractors shall pay all mechanics and laborers employed or working upon the Work Site, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, General Decision Number TX20230025, which is made a part hereof, regardless of any contractual relationship which may be alleged to exist between Contractor or Subcontractor and the laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination, General Decision Number TX20230025, for the classification of Work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing Work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which Work is performed. The wage determination (including any additional classification and wage rates conformed under



paragraph 12.2.1)) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the Work in a prominent and accessible place where it can be easily seen by the workers.

- 12.3 Trinity Metro requires that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, General Decision Number TX20230025, and which is to be employed under the Contract shall be classified in conformance with the wage determination, General Decision Number TX20230025. Trinity Metro shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
1. The Work to be performed by the classification requested is not performed by a classification in the wage determination; and
  2. The classification is utilized in the area by the construction industry; and
  3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- 12.4 If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and Trinity Metro agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by Trinity Metro to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.
- 12.5 In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and Trinity Metro do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), Trinity Metro shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

- 12.6 The wage rate (including fringe benefits where appropriate) shall be paid to all workers performing Work in the classification under this Contract from the first day on which Work is performed in the classification.
- 12.7 Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination, General Decision Number TX20230025, or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 12.8 If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis–Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.
- 12.9 The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor on the Work the difference between the rates of wages required by the Contract to be paid laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor on the Work and the rates of wages received by the laborers and mechanics and not refunded to Contractor or Subcontractors or their agents) the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the Work Site all or part of the wages required by the Contract, the FTA may, after written notice to the Contractor take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- 12.10 Contractor and all Subcontractors shall keep an accurate payroll record during the course of the Work, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week by each employee, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of

- the Davis-Bacon Act), deductions made and actual wages paid. Contractor is required to preserve these payroll records for a period of three years thereafter for all laborers and mechanics working at the Work Site. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- 12.11 These payroll records shall be certified weekly and submitted to Trinity Metro by close of business on Wednesday of the following week. Contractor and all Subcontractors shall forfeit, as a penalty to the Trinity Metro, \$50 for each calendar day or portion thereof, for each employee employed in the execution of the Work that is paid less than the prevailing wage and fringe benefits rate per “General Decision Number TX20230025” for such work or craft in which said employee is employed in the execution of the Work at the Work Site. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee’s social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/forms/wh347> or its successor site. The Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the FTA if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the FTA, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Contractor to

require a Subcontractor to provide addresses and social security numbers to the Contractor for its own records, without weekly submission to Trinity Metro.

- 12.12 Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
1. That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
  2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
    - a. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed, as specified in the applicable wage determination incorporated into the contract.
    - b. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance".
    - c. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- 12.13 Contractor or Subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the FTA may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- 12.14 Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the Work Site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where the Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- 12.15 Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval,

evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the Work Site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the Work Site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

- 12.16 Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- 12.17 The Contractor shall comply with the requirements of 29 CFR part 3 (the Copeland Act), which are incorporated by reference in this Contract. The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any Subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- 12.18 A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12. If Trinity Metro finds that any laborer or mechanic employed by Contractor or

any Subcontractor directly on the Work Site covered by the Contract has been or is being paid a rate of wages less than the rate of wages required by the Contract to be paid, the federal government by written notice to Contractor may terminate Contractor's right to proceed with the Work or the part of the Work as to which there has been a failure to pay the required wages. The government may have the work completed, by contract or otherwise, and Contractor and Contractor's sureties shall be liable to the government for any excess costs the government incurs.

- 12.19 Trinity Metro will not recognize any claim for additional compensation because of the payment by Contractor or any Subcontractor of any wage rate in excess of the prevailing wage rate set forth in "General Decision Number TX20230025." The possibility of wage increase is one of the elements to be considered by Contractor and all Subcontractors in determining the Proposal. Contractor and its Subcontractors shall not be eligible for reimbursement or additional increases in the Contract Proposal Price for subsequent increases in wages and/or fringes benefits made after the date of Proposal Opening.
- 12.20 Contractor will be required to comply with Title VI and VII of the 1964 Civil Rights Act, (as amended), with Executive Order No. 11246, and with all other regulations applicable to equal employment and nondiscrimination.
- 12.21 In accordance with the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 - 3708, Contractor agrees and assures that, for the Project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Contractor agrees that determinations pertaining to these requirements will be made in accordance with applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Commotion (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.
- 12.22 All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- 12.23 Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR

parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

12.24 By entering into this Contract, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

12.25 No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

12.26 The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**SP 013 Staging Plan and Clean Up**

**13.1 Staging/Storage Areas**

Contractor is not required to utilize any sites identified by Trinity Metro for staging or storage and may propose alternative locations for approval by Trinity Metro. Any location used by Contractor for staging or storage shall have the site and natural drainage pattern restored to their original condition upon completion of the Project at no additional cost to Trinity Metro.

**13.2 Cleaning Up**

Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the Work, Contractor shall remove from the Work site or premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Trinity Metro. Upon completing the Work, Contractor shall leave the Work Site in a clean, neat and orderly condition satisfactory to Trinity Metro.

**SP 014 Existing Material**

The disposition of all existing Material shall become the responsibility of Contractor and shall coordinate disposition with Trinity Metro. All salvage materials shall be credited to Trinity Metro.

**SP 015 Utilities for Construction**

Contractor is responsible for any utilities, including water, needed for the Project.

**SP 016 Safety**

Contractor shall comply with Trinity Metro's Construction Safety Policies as described in this IFB.



**SP 017 Safety Restrictions - Work Near High Voltage Lines**

The following procedures will be followed:

A warning sign not less than five inches by seven inches, painted yellow with black letters that are legible at twelve feet shall be placed inside and outside vehicles such as cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment, or similar apparatus. The warning sign shall read as follows:

“WARNING - UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN SIX FEET OF HIGH VOLTAGE LINES.”

1. Equipment that may be operated within ten feet of high voltage lines shall have an insulating cage-type guard about the boom or arm, except back hoes or dippers, and insulator links on the lift hook connections.
2. When necessary to work within six feet of high voltage electric lines, notification shall be given the power company (Oncor) who will erect temporary mechanical barriers, de-energize the lines, or raise or lower the line. The work done by the power company shall be at Contractor’s sole cost and expense. The notifying entity shall maintain an accurate log of all such calls to Oncor and shall record action taken in each case.
3. Contractor is required to make arrangements with the Oncor for the temporary relocation or raising of high voltage lines and will be at the Contractor’s sole cost and expense.
4. No person shall work within six feet of a high voltage line without protection having been taken as outlined in this IFB.

**SP 018 Traffic Control**

Contractor shall be responsible for providing traffic control during the construction of this project consistent with the provision set forth in the 2011 Texas Manual on Uniform Traffic Control Devices Revision 2, or the latest revision of same, in accordance with Proposal plans indicating traffic control requirements of each location.

**SP 019 Detours**

Contractor shall prosecute his work in such a manner as to create a minimum of interruption to traffic and pedestrian facilities and to the flow of vehicular and pedestrian traffic within the Project area.

**SP 020 Barricades and Warning Signs**

Barricades, warning, and detour signs shall conform to the Standard Specifications “Barriers and Warning and/or Detour Signs,” as set forth in the 2011 Texas Manual on Uniform Traffic Control Devices Revision 2, or the latest revision of same.

**SP 021 Rights of Way, Easements and Premises**

Contractor shall confine construction activities within rights of way and construction limits as shown in the construction documents unless other arrangements are made with owner(s) of adjacent private property. If additional space or property is needed to accommodate Contractor's method of construction or for the convenience of Contractor, Contractor shall bear all related costs and responsibilities. Prior to negotiating for the use of any private property outside the specified construction limits, Contractor shall notify Trinity Metro of its intention. Prior to the use of any private property outside the specified construction limits, Contractor shall provide Trinity Metro a copy of written permission from the property owner(s). Contractor shall provide Trinity Metro a copy of the property owner(s) release when construction activities have been completed.

**SP 022 Zoning Requirements**

During the construction of the Project, Contractor shall comply with zoning requirements of the appropriate city/county in the use of vacant property for storage purposes.

**SP 023 Evaluation of Bids**

Any Bid may be rejected if Trinity Metro determines that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the Proposal, but the prices for individual items as well. All firms submitting a bid must also be determined that they are responsive and responsible.

**SP 024 Indemnification**

**SP 24.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS TRINITY METRO AND THE BOARD, AND ALL OF THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, MANAGERS, REPRESENTATIVES, ASSIGNEES AND AFFILIATES, OF FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIABILITY(IES) OR EXPENSE(S) (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES) ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR CONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF CONTRACTOR, BUT ONLY TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE (INCLUDING BUT NOT LIMITED TO CONTRACTOR'S CONSULTANTS, SUBCONTRACTORS, SUB-SUBCONTRACTORS AND SUPPLIERS).**

**SP 24.2 NOTWITHSTANDING THE FOREGOING SECTION SP 25.1, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS TRINITY METRO AND THE BOARD, AND ALL OF THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, MANAGERS, REPRESENTATIVES, ASSIGNEES AND AFFILIATES FROM AND AGAINST ANY AND ALL CLAIMS FOR THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF AN EMPLOYEE OF CONTRACTOR, ITS AGENT OR ITS SUBCONTRACTOR OF ANY TIER, WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED, OR IS**

**ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF TRINITY METRO AND CONTRACTOR THAT IN SUCH EVENT THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. CONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

**SP 24.3 THE INDEMNIFICATION OBLIGATIONS HEREIN SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR, ANY SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, UNDER WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.**

**SP 24.4 CONTRACTOR SHALL DEFEND AND INDEMNIFY TRINITY METRO AND THE BOARD, AND THEIR RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY SUITS OR OTHER PROCEEDINGS ARISING FROM OR RELATED TO INTELLECTUAL PROPERTY INFRINGEMENT, OR CONTRACTOR'S FAILURE TO PAY ANY SUBCONSULTANT, SUBCONTRACTOR, OR SUPPLIER, IN CONNECTION WITH THIS CONTRACT, EXCEPT TO THE EXTENT THE CLAIM IS BASED ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY TRINITY METRO OR THE BOARD, OR ANY ONE OF THEIR RESPECTIVE AGENTS, EMPLOYEES, OR OTHER ENTITIES (EXCLUDING THE CONTRACTOR AND ITS AGENTS, EMPLOYEES OR SUBCONSULTANTS) OVER WHICH TRINITY METRO OR THE BOARD EXERCISES CONTROL.**

**SP 24.5 CONTRACTOR SHALL CAUSE ALL CONTRACTS FOR SUBCONTRACTED SERVICES TO INCLUDE LIKE INDEMNITY PROVISIONS THAT SHALL COVER BOTH TRINITY METRO AND CONTRACTOR. NOTHING HEREIN SHALL LIMIT THE INSURANCE REQUIREMENTS OR APPLICABILITY OF SAME SET FORTH IN THIS AGREEMENT AND THE CONTRACT DOCUMENTS. THE INDEMNIFICATION OBLIGATIONS SET FORTH HEREIN SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

**SP 24.6 IF ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AFFECT THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION OBLIGATIONS UNDER THIS ARTICLE, SUCH LEGAL LIMITATIONS ARE MADE A PART OF THE INDEMNIFICATION OBLIGATION TO THE MINIMUM EXTENT NECESSARY TO BRING THE INDEMNIFICATION INTO CONFORMITY WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND AS SO MODIFIED THE INDEMNIFICATION OBLIGATIONS SHALL CONTINUE IN FULL FORCE AND EFFECT.**

**SP 24.7 TRINITY METRO HAS THE RIGHT TO APPOINT DEFENSE COUNSEL, AT ITS OWN EXPENSE, TO ASSOCIATE IN THE DEFENSE OF ANY CONTESTED CLAIM. TRINITY METRO'S ELECTION TO APPOINT DEFENSE COUNSEL WILL NOT AFFECT CONTRACTOR'S OBLIGATION TO INDEMNIFY AND HOLD HARMLESS TRINITY METRO FROM AND AGAINST ALL CLAIMS TO THE EXTENT SET FORTH IN THE CONTRACT. WHEN CONTRACTOR PROVIDES A DEFENSE FOR TRINITY METRO, CONTRACTOR WILL RETAIN COUNSEL EXPERIENCED IN DEFENDING SUCH CLAIMS AND MUTUALLY AGREEABLE TO BOTH TRINITY METRO AND CONTRACTOR. TRINITY METRO WILL NOT UNREASONABLY WITHHOLD, CONDITION, OR DELAY ITS CONSENT TO CONTRACTOR'S CHOICE OF COUNSEL. CONTRACTOR WILL NOT SETTLE ANY CLAIMS IN A**

**MANNER THAT WOULD IMPOSE ANY EXPENSE, PENALTY, OBLIGATION, OR LIMITATION ON TRINITY METRO WITHOUT TRINITY METRO'S PRIOR WRITTEN CONSENT.**

## SECTION 7 GENERAL PROVISIONS

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**101** Terms and Definitions**TERMS****DEFINITIONS**

**Construction Schedule** The schedule prepared by Contractor and accepted by Trinity Metro setting forth the logical sequence of activities required for Contractor's orderly performance and completion of the Work in accordance with the Contract and specifically to meet the specified milestone dates.

**Consultant** Any person, firm, partnership, corporation or other entity, or combination thereof under contract to Trinity Metro and performing design related services, including but not limited to, engineering, geotechnical investigations, design, project control, construction management, contract administration, surveying, and environmental assessment in support of the overall Project of which the Contract is a part.

**Contract** The written agreement covering the performance of the Work and the furnishing of labor, Materials, tools and equipment in the design, supervision and construction of the Work. The Contract shall include the Invitation for Bid, Bid, General and Special Provisions, plans and specifications and contract bonds; also any and all modifications amending or extending the Work contemplated and which may be required to complete the Work in a substantial and acceptable manner.

**Contract Price** The total amount payable by Trinity Metro to Contractor, including authorized adjustments, for the performance of the Work under the Contract.

**Contractor** The individual, firm, partnership, corporation, or other entity or combination thereof entering into the Contract with Trinity Metro and primarily liable for acceptable performance of the Work, as well as performing services, including but not limited to engineering, geotechnical investigations, design, project control, construction management, contract administration, surveying, and environmental assessment in support of the overall Project of which the Contract is a part.

**Days** Unless otherwise designated, "days" as used in the specifications will be understood to mean calendar days. In computing any period of time established under the Contract, the day of the event from which the designated period of time begins to run shall not be included.

**Extra Work** Work that is not reasonably within the scope of the Contract documents and not otherwise incidental or necessary to performance of the

Contract. The term does not include any change by Contractor in the means and methods for performing the work from that anticipated or Bid, whether or not the change is due to foreseeable or unforeseeable events or conditions, if the intended result or scope of the Work is not expanded or increased. Trinity Metro shall not be liable for any claim due to a change in the means or methods of construction by Contractor, resulting in additional costs, if Trinity Metro has not changed the plans and specifications and if the intended result and scope of the work required by and reasonably inferred from the Contract documents remains the same. Trinity Metro shall also not be liable for any claim for work required in performance of the Contract, without which the Contract could not be performed in accordance with its terms, notwithstanding that Contractor did not contemplate or foresee the degree or amount of work that would be necessary or required to complete the Contract and notwithstanding that it cost Contractor more to complete the Contract work than originally contemplated.

<b>Final Acceptance</b>	Written notice by Trinity Metro acknowledging that Contractor has fulfilled all of its obligations under the Contract and that Trinity Metro has accepted the Work as of the date stated in the Notice. Final Acceptance is a condition precedent to Final Payment and defines commencement of the warranty period.
<b>Final Completion</b>	The fulfillment of all of Contractor's obligations under the Contract.
<b>FTA</b>	Federal Transit Administration.
<b>Legal Holidays</b>	The following days on which Contractor is not allowed to work: January 1 <sup>st</sup> , the last Monday in May, July 4 <sup>th</sup> , the first Monday in September, the fourth Thursday in November and December 25 <sup>th</sup> .
<b>Materials</b>	Any substance such as building and construction materials, equipment, products, and articles incorporated or to be incorporated into the Work.
<b>Modification</b>	A written document signed by Trinity Metro, including a Change Order, issued to Contractor which alters the scope of the Work to be performed by Contractor, changes the schedule for performance of the Work, increases or decreases Contractor's compensation, or makes any other change to the Contract.
<b>Other Contractor</b>	A contractor other than Contractor, as defined herein, performing work or services on the Project.
<b>Plans</b>	The drawings, standard drawings, profiles, typical cross-sections, general cross-sections, elevations, diagrams, schedules, and details, which show



the locations, character, dimensions, and details of the Work.

<b>Project</b>	TRINITY METRO's overall objective or endeavor of which the Contract forms a part.
<b>Product Data</b>	Written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, or other information furnished by Contractor to describe building or construction Materials to be used for some portion of the Work.
<b>Project Closeout</b>	The process by which Contractor documents fulfillment of all obligations under the Contract. This process follows Substantial Completion and precedes Final Acceptance.
<b>Project Manager</b>	Contractor's designated representative who is present on-site, authorized to receive and fulfill instructions from Trinity Metro, and who directs the Work.
<b>Punch List</b>	A list or lists of items to be furnished and/or work to be performed by Contractor to finally complete the Work.
<b>Purchaser</b>	Fort Worth Transportation Authority (dba Trinity Metro)
<b>Recipient</b>	Fort Worth Transportation Authority (dba Trinity Metro)
<b>Samples</b>	Physical examples of building and construction Materials to be supplied, or workmanship which, when approved by Trinity Metro, shall establish standards by which the Work shall be judged.
<b>Shop Drawings</b>	Drawings, diagrams, schedules, or other data prepared by Contractor or any Subcontractor, manufacturer, Supplier, or distributor to illustrate or detail some portion of the Work.
<b>Scope of Work</b>	That part of the Contract containing written directions and requirements for completing the Work. Standards, or portions thereof, cited in the Specifications by reference shall have the same effect as if physically included in the Contract in their entirety.
<b>Subcontractor</b>	Any person, firm, partnership, corporation, or other entity, other than employees of Contractor, who contracts with Contractor or another such party to furnish labor, or labor and Materials, under the Contract.
<b>Substantial Completion</b>	Completion of the Work to the state where such Work can be used for the purpose and in the manner for which it was intended, without harm or risk of harm to such Work, or any other Work, or to any person or other

property, all as certified by Trinity Metro in accordance with the terms hereof. To achieve Substantial Completion all testing must be complete and the Work must be operating properly.

<b>Supplier</b>	Any person, firm, partnership, corporation or other entity that provides Materials, including those fabricated to a special design, but usually provides no labor at the Work Site other than delivery.
<b>Trinity Metro</b>	The Fort Worth Transportation Authority.
<b>Work</b>	The furnishing of all of the supervision, labor, Material, equipment, services, geotechnical investigations, project control, construction management, contract administration, surveying, environmental assessment and incidentals necessary to complete any individual item and the entire Contract and the carrying out of any duties and obligations imposed on Contractor by the Contract, including completing such activities in compliance with the Plans and Specifications.
<b>Work Site</b>	The area enclosed by the limit of Work indicated on the Plans and the boundaries of local streets and public easements in which Contractor is to perform under the Contract.
<b>Working Drawings</b>	The drawings prepared by Contractor which depict the sequence, methods, Material, details of construction or procedures for accomplishing a portion of the Work, including, but not necessarily limited to, false work, shoring, concrete form work and excavation plans.

## **201 General Contract Requirements**

- A. Contractor shall perform the Work in strict accordance with the Contract. Contractor shall provide and pay for all supervision, labor, Materials, tools, equipment and machinery, water, electricity, fuel, heat, utilities, transportation, and other facilities and services, except for those specifically identified in the Contract as provided by Trinity Metro or others, necessary for the proper execution and completion of the Work by its own means and methods. Contractor is responsible for ensuring that the quality of finished work meets all aspects of the Contract, Contract Documents, Plans and Specifications, federal, state, and local laws and all requirements of any authority having jurisdiction.
- B. Contractor is solely responsible for the completed Project and is the single point of responsibility for quality, cost and schedule. Contractor is responsible for all construction means, methods, techniques, sequences and procedures for building the Project in a good and workmanlike manner, and for coordinating all portions of

the Work. Contractor shall be responsible for all damages to persons or property that occur as a result of Contractor's fault or negligence and shall take proper safety and health precautions to protect the Work, the workers, the public and the property of others. Contractor shall be responsible for all Materials delivered and Work performed.

- C. If any references have been made in the Specifications to responsibilities of work by crafts and specialty or trade contractors, these references were made for the convenience of preparing the Specifications and are not intended to limit any responsibility of Contractor to provide a complete installation under the Contract. Whenever such references are made to any trade designation, Subcontractor, or specialty contractor, it is understood that Contractor is nevertheless responsible to Trinity Metro for the Work under the Contract, including for Work provided or performed by such persons as Subcontractors, Suppliers to Contractors.
- D. If Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

## **202 Ownership of Work and Materials**

- A. All Work performed by Contractor pursuant to the Contract shall be the property of Trinity Metro. Trinity Metro shall own all construction, and any data, documents, plans, specifications, working papers, computer programs, photographs, or other material produced by Contractor pursuant to the Contract, and Contractor hereby irrevocably assigns and transfers to Trinity Metro any and all copyrights for such material. To the extent that such programs used are internal, proprietary programs used by Contractor in the performance of the Work, Contractor will provide Trinity Metro such access to the programs as is necessary for Trinity Metro to be able to use the products and documents generated by the program, but Contractor is not required to transfer the copyrights or other intellectual property rights to the program to Trinity Metro.
- B. As security for partial, progress, or other payments, title to work for which such payments are made shall pass to Trinity Metro at the time of the payment. To the extent that title has not previously been vested in Trinity Metro by reason of payments, full title shall pass to Trinity Metro at delivery of the work at the location specified in the Contract.
- C. Unincorporated work to which Trinity Metro has received title by reason of progress, partial or other payments shall be segregated from other Contractor or Subcontractor

Materials and clearly identified as Trinity Metro property. Contractor shall be responsible for all Materials until they have been incorporated into the Work and the Work has been finally accepted by Trinity Metro.

- D. The title transferred as above shall in each case be good, and free and clear of any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any way that would result in any lien, security interest, charge, or claim upon or against said items.
- E. The transfer of title as provided above shall not imply acceptance by Trinity Metro, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to such items.
- F. Contractor shall insert provisions in its subcontracts sufficient to ensure compliance with the content of this Section.

### **203 Drawings and Other Data**

- A. All documents developed by Contractor in the performance of the Contract shall become the sole property of Trinity Metro and may be used by Trinity Metro on any other project without additional compensation to Contractor. Use by Trinity Metro of these documents on other projects does not confer any liability on Contractor.
- B. Trinity Metro shall be considered the “person for whom the work was prepared” for the purpose of authorship in any copyrightable work under 17 U.S.C. § 201(b). With respect thereto, Contractor agrees not to assert or authorize others to assert any rights or establish any claim under the design related patent and copyright laws. All design drawings, as-built drawings and specifications, in any form, shall contain a copyright mark of Trinity Metro, except for those drawings that are used internally by Contractor to develop designs for the Project.

### **204 Contract Order of Precedence**

- A. The General Provisions, Special Provisions, Plans, Specifications, Contract attachments and exhibits are essential to the Contract. All are intended to be complementary and to provide for completed work suitable for its intended use. A requirement occurring in one is as binding as though occurring in all. Where Plans and Specifications describe portions of the Work in general terms, but details are

incomplete or silent, it is understood that only the best general practice is to prevail and that only new Materials and first-quality workmanship are to be used. Omissions of details of Work that are manifestly necessary to carry out the intent of the Contract, or that are customarily performed, shall not relieve Contractor from the obligation to perform such Work. Notes on Plans are part of the Plans. No reliance shall be placed on dimensions scaled from any Plans.

- B. The documents referenced below are in descending order of precedence. Any conflict between any of the documents shall be resolved in favor of the document with higher precedence.
- Contract Form
  - Special Provisions
  - General Provisions
  - Scope of Work
  - Reference Documents, Standards, and Codes
  - Invitation for Bid (IFB) including plans and specification
  - Bid
- C. Contractor shall immediately notify Trinity Metro, in writing, of any ambiguity or conflict within or between documents, any error, omission, lack of necessary detailed description, or a detail, which is a potential code violation, which is discovered in the Specifications or Plans and request clarification and direction. Trinity Metro will provide clarification and direction as required to fulfill the intent of the specifications. Proceeding without the required notification and request for clarification or instruction shall be at Contractor's risk.

## **205 Contractor's Status**

Contractor is an independent contractor for all purposes, is not an agent nor an employee of Trinity Metro, and is entitled to no compensation from Trinity Metro other than that provided by the Contract. Contractor shall be fully responsible for all acts and omissions of its employees, Subcontractors, and Suppliers of any tier, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the Contract. No contractual or beneficiary relationship between any Subcontractor or Supplier of any tier of Contractor and Trinity Metro arises by virtue of the Contract. No contractual or beneficiary relationship between the federal government and Contractor, its Subcontractors, Suppliers or other third parties arises by virtue of the Contract. No provision of the Contract shall be for the benefit of any party other than Trinity Metro and Contractor.

## **206 TRINITY METRO's Right to Carry Out the Work**

If Contractor fails or refuses to carry out all or any part of the Work in accordance with the Contract requirements or within the Contract schedule and fails or refuses to correct

such deficiency within ten (10) days of receipt or written notice thereof from Trinity Metro, Trinity Metro, in its sole discretion and without waiving any other rights it may have, may elect to correct such deficiencies and charge Contractor the cost of such corrections. Nothing in this clause shall relieve Contractor of its obligation to perform the remainder of the Work in accordance with the Contract. Trinity Metro, at all times, shall have full and complete access to the Project and the Work.

**207 Applicable Law and Jurisdiction**

The Contract, as well as the rights, obligations and remedies of the parties, shall be governed by the laws of the State of Texas. Whenever there is no applicable state statute or decisional precedent governing the interpretation of or disputes arising under or related to the Contract, then federal common law, including the law developed by federal boards of contract appeals, the United States Court of Federal Claims, the United States Claims Court, and the Comptroller General of the United States, shall govern. Any suit or action arising from the Contract shall be commenced and prosecuted in the courts of Tarrant County, Texas or the United States District Court for the Northern District of Texas, as applicable, and the parties agree to submit to the exclusive jurisdiction and venue of these courts.

**208 Compliance with Laws and Regulations**

- A. Contractor shall adhere to all applicable federal, state, and local laws, regulations, and policies, including, but not limited to all applicable provisions of the Contract Work Hours and Safety Standards Act, Americans with Disabilities Act, equal employment opportunity laws, nondiscrimination in services and affirmative action laws, including all regulations implementing Executive Order No. 11246 of the President of the United States, as amended by Executive Order 11375, Section 402 of the Vietnam Readjustment Assistance Act of 1974, Section 503 of the Rehabilitation Act of 1973, and Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.* Contractor agrees not to discriminate, exclude from participation or deny of program benefits on the basis of race, color, creed, national origin, sex or age.
- B. Contractor shall comply with any and all of the laws and regulations discussed and addressed in this Section at its sole cost and expense and without any increase in Contract price or Contract time on account of such compliance, regardless of whether such compliance would require additional labor, equipment, and/or Materials not expressly provided for in the Contract. If appropriate, Contractor is permitted an increase in Contract time and the Contract Price, but not the Contractor's Fee, if laws, regulations, or directives change during the course of the Project. This requirement includes familiarization and compliance with the enactment of new laws or amendment of existing statutes, ordinances, or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the date Bids

were due on the Contract. Contractor shall ensure that all Subcontractors and Suppliers on the Project comply with all laws referenced herein and include appropriate flow down provisions in each of its lower-tier subcontracts as required by applicable laws, regulations, policies and related administrative practices, whether or not required herein.

- C. Contractor shall comply with, and make compliance a part of each subcontract in excess of one hundred thousand dollars (\$100,000.00), all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under nonexempt Federal Contracts, grants or loans, of facilities included on the EPA List of Violating Facilities. Any violation of these laws, rules, or regulations shall be reported immediately to the United States Environmental Protection Agency, Assistant Administrator for Enforcement (EN-329).
- D. Contractor agrees to comply with the following federal laws and regulations providing protections for employees involved in construction activities: 49 U.S.C. § 5333(a), 40 U.S.C. § 3141 *et seq.*, 18 U.S.C. § 874, and 40 U.S.C. § 3145.
- E. Contractor shall give all notices required for timely compliance with applicable federal, state, and local laws, ordinances, rules, regulations, and restrictions. Upon written request, Contractor shall furnish TRINITY METRO with satisfactory documentation evidencing compliance with the applicable requirements.
- F. Contractor shall be liable for and shall pay all fines, assessments, and other costs resulting from Contractor's violation of any applicable federal, state, or local statute, regulation, ordinance, or other restriction.

### **301 Notice to Proceed**

Except as specifically authorized in writing by Trinity Metro, Contractor is not authorized to perform Work under the Contract until the effective date of the Notice to Proceed ("NTP"). Any Work performed or expenses incurred by Contractor prior to Contractor's receipt of the NTP will be entirely at Contractor's risk. The NTP shall be given by TRINITY METRO no later than 30 days after Trinity Metro has received the executed Contract and all required bonds, insurance certificates and prerequisite submittals. Upon the effective date of the NTP, Contractor shall commence Work and prosecute the Work to completion within the time limits specified. The effective date of the first NTP shall be the first day of the Contract for purposes of the Construction Schedule. Trinity Metro shall designate its authorized representative at the time the NTP is issued.

**302 Permits**

With the exception of the specific permits, if any, referenced in the Special Provisions of the Contract that will be obtained by Trinity Metro, Contractor shall be solely responsible, without additional expense to Trinity Metro, for obtaining all necessary licenses and permits and for complying with all federal, state, county and municipal laws, codes, and regulations applicable to the performance of the Work, including, but not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the Work.

**303 Superintendence by Contractor**

- A. Contractor shall directly superintend the Work through its own organization at all times during performance of the construction portion of the Contract and until the Work is completed and accepted. Contractor shall give its personal attention to the Work and have competent personnel present on the Work at all times during its progress. Contractor may not subcontract its obligation under this Section.
- B. Contractor shall appoint one competent on-site Project Manager/Superintendent who shall have full authority to act on behalf of Contractor and any or all Subcontractors in all matters within the scope of the Contract including execution of Change Orders. The Project Manager/Superintendent or one designated assistant, competent to direct the Work and authorized to act on behalf of Contractor, shall be present on the Work Site at all times when Work is being performed by the Contractor or a Subcontractor or Supplier of any tier. Contractor shall furnish Trinity Metro with a written confirmation of the Project Manager's/Superintendent's authority to act for Contractor and a copy of the designated assistant's authorization.
- C. Trinity Metro reserves the right to require Contractor to remove any of its or its Subcontractor or Supplier personnel from the Contract and/or Work Site for reasonable cause, even if previously approved by Trinity Metro. Failure to immediately remove such personnel shall be considered a material breach of the Contract. Contractor shall replace any Subcontractor or Supplier so removed with a replacement Subcontractor or Supplier agreeable to Trinity Metro, at no additional cost to Trinity Metro

**304 Contractor Participation**

- A. Except as otherwise provided in the Contract, Contractor shall perform no less than the percentage of the Work specified in the Special Provisions, on the Work Site, with its own organization. Any items designated as "Specialty Items" in the Special Provisions, if subcontracted, will be deducted from the original Contract price before computing the amount of Work required to be performed by



Contractor's own organization.

- B. The phrase "Contractor's own organization" as used in the Contract includes only workers employed and paid directly by Contractor, equipment owned or rented by Contractor, and incidental rental of operated equipment.

**305 Cooperation by Contractor**

Contractor shall cooperate with Trinity Metro in the conduct of Contractor's operations under the Contract. Contractor shall assist Trinity Metro as required by the Contract. Trinity Metro may award other contracts in conjunction with this project. Other agencies may also be performing work, including utility relocation activities, by contract or otherwise, in support of this project. These activities may be underway in the proposed construction area during the life of the Contract. Contractor shall cooperate with Trinity Metro, other agencies, and Other contractors in scheduling and coordinating Contractor's Work with the work of Other Contractors to minimize conflicts. Contractor shall not commit or permit any act which will interfere with the performance of the work by any agency, Other Contractor, or authority.

**306 Site Investigation and Conditions Affecting the Work**

- A. Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, including, but not limited to, visiting the sites for the Work; carefully examine local conditions; informing itself by its independent research, tests, and investigations of the difficulties encountered and judge for itself the accessibility of the Work and all attenuated circumstances affecting the cost of doing the Work and the time required for its completion; and to obtain all information required to make a bid. Contractor has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to:
1. Conditions bearing upon transportation, disposal, handling, and storage of material;
  2. The availability of labor, water, electric power and roads;
  3. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
  4. The conformation and conditions of the ground; and
  5. The character of equipment and facilities primarily needed to and during work performance.
- B. Contractor further acknowledges and represents that all such circumstances are

included in its Bid, Contract Price and the contract schedule.

- C. Contractor acknowledges that its project baseline schedule includes an allowance for the normal number of days in which the Work may be partially or totally delayed because of weather during the seasons and at the locations where the Work will be performed. Contractor shall not be entitled to excusable delays or compensation for such normal weather days.
- D. Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, access to the site, and territory surrounding the site, including all exploratory work done by Trinity Metro, as well as from the drawings and specifications made a part of the Contract and referenced Materials made available by Trinity Metro. Any failure of Contractor to take the actions described and acknowledged in this paragraph will not relieve Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to Trinity Metro. Contractor is relying upon its own estimates, investigations, tests, and other data which are necessary for full and complete information upon which the bid may be based.
- E. After award of the Contract and in preparation of its final work, Contractor shall complete geotechnical and utility investigations, including the use of appropriate utility locating technology, to satisfy itself of existing conditions.
- F. Trinity Metro assumes no responsibility for any conclusions or interpretations made by Contractor based on the information made available by Trinity Metro. Nor does Trinity Metro assume responsibility for any understanding reached or representation made by any of its officers or agents before the execution of the Contract, concerning conditions which can affect the work, unless that understanding or representation is expressly stated in the Contract.
- G. If, at any time during the performance of the Contract, Contractor becomes aware of an actual problem, fault or defect in the Project or any non-conformance with any Contract document, federal, state or local law, rule or regulation, Contractor shall give immediate written notice thereof to Trinity Metro. If Contractor is aware of any such problem, fault, defect or non-conformance, or should be aware through proper diligence of any such problem, fault, defect or non-conformance, and Contractor fails to give the required notice, Contractor shall assume full responsibility therefore and shall bear all costs attributed thereto, including indemnifying Trinity Metro under the indemnification requirements of the Contract.
- H. Contractor agrees to comply with the following federal regulations: the

Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 *et seq.*, U.S. DOT regulations, "Seismic Safety," 49 CFR Part 41, Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," and 42 U.S.C. § 7704 note.

**307 Differing Site Conditions**

- A. Contractor shall, within three (3) days of first observance and before the conditions are disturbed, give a written notice to Trinity Metro of:
  - 1. Subsurface or latent physical conditions at the site which differ materially from those reasonably anticipated and indicated in the Contract; and which could not have been discovered by Contractor's reasonable investigation;
  - 2. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided in the Contract; and which could not have been discovered by Contractor's reasonable investigation; or
  - 3. Unknown utilities that Contractor could not discover from the Contract Documents or through contact with the utility owner.
- B. Trinity Metro shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for performing any part of the work under the Contract, whether or not changed as a result of conditions, an equitable adjustment will be made and the Contract modified in writing accordingly.
- C. No request by Contractor for an equitable adjustment to the Contract under this Section shall be allowed unless Contractor has given the written notice required.
- D. No request by Contractor for an equitable adjustment of the Contract for differing site conditions will be allowed or shall be made after final payment under the Contract.

**308 Historical, Scientific, and Archaeological Discoveries**

- A. Contractor shall immediately give an oral and written report to Trinity Metro of the discovery of any articles of historical, scientific, or archaeological significance. Contractor shall take all necessary steps to preserve the article and shall cease operations, which would affect the find until otherwise directed by Trinity Metro but continue with all other unaffected operations. The future operations of

Contractor with respect to the discovery, including disposition of the articles, shall be decided by Trinity Metro. Trinity Metro shall have sole and exclusive title to any discovered articles.

- B. Trinity Metro shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for performing any part of the work under the Contract, whether or not changed as a result of conditions, an equitable adjustment will be made and the Contract modified in writing accordingly.
- C. No request by Contractor for an equitable adjustment to the Contract under this Section shall be allowed unless Contractor has given the written notice required.
- D. No request by Contractor for an equitable adjustment of the Contract for differing site conditions will be allowed or shall be made after final payment under the Contract.

**309 Protection of Existing Site Conditions and Property**

- A. Through the date of Final Acceptance, Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site which are not to be removed and which do not unreasonably interfere with the work required under the Contract. Contractor shall remove trees only when specifically authorized to do so and shall avoid damaging vegetation that will remain in place.
- B. Contractor shall protect from damage all existing improvements, facilities, utilities, and other property:
  - 1. At or near the work site.
  - 2. On adjacent property of a third party.

Contractor shall repair any damage to such property, including that belonging to any third party, resulting from failure to comply with the requirements of the Contract or failure to exercise reasonable care in performing the Work, at no expense to Trinity Metro. If Contractor fails or refuses to repair the damage promptly, Trinity Metro may have the necessary work performed and charge the cost to Contractor, which charges shall be promptly paid by Contractor.

- C. Contractor shall avoid damaging existing buildings, equipment, and vegetation on or about premises owned by, or under the control of Trinity Metro, Trinity Rail Express, and Trinity Metro's Consultants while the work is being performed. If

Contractor causes damage to any of this property, Contractor shall replace or repair the damage at no expense to Trinity Metro as Trinity Metro directs. If Contractor fails or refuses to make such repair or replacement, Contractor shall be liable for the cost, which may be deducted from the Contract price.

- D. Through the date of Final Acceptance, Contractor shall take proper measures to protect adjacent and adjoining property, which might be injured by any pieces of construction and in any case of an injury or damage resulting from any act or omission on the part of Contractor, shall be restored at Contractor's expense.
- E. Facilities and installations of various utilities may be present in the area of the Work. Contractor shall cooperate with owners of utilities to protect any above ground and below ground utility property. Contractor shall contact the utility owners and arrange operations and schedules to minimize any interruption of utility services. Contractor shall provide utility owners with sufficient notice to allow adequate time for location of utility services, scheduling of outages, or other utility activities needed to accommodate Contractor's operations. Contractor shall determine and verify the exact locations and conditions of existing utility property and specifically underground utility property with the utility owner prior to performing excavation or other work in the area. Contractor shall be wholly responsible for all costs, including costs for restoration of services, and resulting schedule impacts, when utility services are damaged or interrupted by its operation.
- F. In the event of disruption or threat to utility services as a result of construction related activities, regardless of cause, Contractor shall promptly notify Trinity Metro, the affected utility, and fire and/or police agencies and other emergency personnel as necessary, and shall cooperate with those agencies to restore said utility services as soon as possible.
- G. Operation of utility or agency water valves and hydrants by unauthorized personnel is strictly prohibited without obtaining written permission from the applicable authority prior to using any water hydrant or operating any water valve. No work shall be undertaken around fire hydrants until provisions for continued access and service have been approved by the local fire authority. The cost for authorizing usage of water or other utilities shall be born wholly by Contractor.

#### **401 Materials**

- A. Through the date of Final Acceptance, Contractor shall be solely responsible for all Materials delivered to the work site or an authorized storage site.
- B. Contractor shall use or incorporate in the work only new Materials conforming to the Plans and Specifications. New material shall be used in the manufacturing of

products to be incorporated in the Work unless otherwise specified.

- C. All Materials except Materials specified by brand name or mark or manufacture, furnished for use or incorporation in the Work, shall be covered by quality certifications, test results or other documentation as required by the Contract to establish compliance of the products with contract requirements. Unless specific tests are required by the specifications, Contractor may provide certifications to establish acceptability of the products furnished. Materials or products, which require certification or other documentation, shall not be incorporated until certifications have been delivered and the product approved by Trinity Metro for incorporation.
- D. Trinity Metro's acceptance of Materials on the basis of compliance documentation, inspection or testing shall not relieve Contractor of the obligation for conformance with the Contract.
- E. References to standards, material specifications, test methods, or other publications of Trinity Metro, American Association of State Highway and Transportation Officials (AASHTO), American Society for Testing and Materials (ASTM), other governmental agencies, or other recognized national organizations are those officially adopted by those agencies and organizations and shall be to the most current revision or edition, unless otherwise specified.
- F. When the Contract requires documentation that Materials comply with a given specification or standard, Contractor shall provide documents, which include a certification that the material conforms with all applicable Contract requirements. The documentation shall identify the Material, list the applicable specifications and tests covered by the certification, describe the source of the Material, and the identity and/or quality of Material certified. The certifying document shall originate with manufacturer or producer of the Material and shall bear the signature of a person qualified to perform the certification and authorized to sign on behalf of the manufacturer or producer. If applicable, the certificate shall list any marking or other identification of the certified Material.
- G. For fabricated or manufactured Materials, in addition to the documentation required by Paragraph F of this Section; the Supplier shall furnish documentation that the fabrication of manufacturing process complies with Contract requirements. The documentation shall list the name and address of the manufacturer or fabricator, the specific process covered by the certification, procedures and equipment used, tests performed and testing frequency, and any other pertinent information required to demonstrate Contract compliance.
- H. Trinity Metro may require testing, at Contractor's expense, of Materials, which are delivered without acceptable identification, certification or other required

documentation. Work, which incorporates Materials for which the required documentation has not been provided, will be considered nonconforming Work.

- I. Trinity Metro reserves the right to sample and test any Material provided for use or incorporation into the Work. Contractor shall furnish, at no cost to Trinity Metro, all samples requested for testing. If Trinity Metro tests indicate that the Material tested does not comply with the Contract requirements, all Material covered by the same certification as the tested sample will be considered as nonconforming.
- J. If, at any time, Trinity Metro deems Contractor's quality control measures are not providing adequate inspection and testing, Contractor shall immediately take corrective action as required by Trinity Metro.
- K. Trinity Metro may, at its discretion, authorize payment for Materials not yet incorporated into the Work, whether or not delivered to the site, subject to the following conditions:
  1. The stored Materials must be long-lead items that affect the construction critical path or items where the purchase and storage would benefit the Project and have been agreed to by Trinity Metro.
  2. The long-lead items must be identified and agreed to as part of the approval process for the baseline schedule or any subsequent revisions of the baseline schedule (not monthly schedule updates).
  3. Material to be incorporated into the Work within ninety (90) days after receipt shall not be considered for progress payment prior to incorporation.
  4. Stored Material shall be segregated to preclude double counting.
  5. As part of the Preliminary and/or Contract Invoice template, Contractor will submit to Trinity Metro a list of all Materials for which Contractor requests payment under this Section. Trinity Metro will review the list and notify Contractor in writing of those items for which payment under this Section will be authorized. Trinity Metro will not authorize prepayment of undeliverable Materials, or for costs not incurred.
  6. Material must be delivered to the Work Site, or delivered to Contractor, and promptly stored by Contractor in an insured warehouse, storage yard, or similar suitable place within 5 miles of the Work Site, or a greater distance, all subject to approval by Trinity Metro. Proof of insurance shall be submitted to Trinity Metro. Trinity Metro will at all times have access to such Materials and storage locations. If the Materials are stored off the

Work Site, Contractor will provide documentation of Trinity Metro's right of access to the Materials in a form satisfactory to Trinity Metro. Before any payment is made for the Material, Contractor will furnish to Trinity Metro evidence of ownership and properly executed bills of sale warranting that the Materials are free from all liens, security interests, and other encumbrances.

7. Contractor will ensure the security of the Materials, will be strictly liable to Trinity Metro for any damage to them, and will replace damaged Materials without cost to Trinity Metro.

**402 TRINITY METRO Furnished Materials**

- A. Materials listed in the Contract as Trinity Metro furnished will be available to Contractor free of charge within the Work Site and at the times indicated in Contractor's approved schedule, unless otherwise specified.
- B. With respect to Trinity Metro furnished Materials, Contractor shall:
  1. Be responsible for all costs for loading, unloading, transporting, storing and handling Materials until incorporated into the Work;
  2. Install and make the Materials fully operational, in accordance with the Contract and manufacturer's requirements, including furnishing all incidental parts and Materials, and scheduling code and other required inspections and tests;
  3. Commencing on the date of the Notice To Proceed, or, if not in storage when the Notice To Proceed is issued, on the date Material is made available to Contractor, whichever is later, assume responsibility for storage and demurrage charges and replacement of Materials lost or damaged from any cause, at no cost to Trinity Metro; and
  4. Notify Trinity Metro immediately upon discovery of any deficiency or defect in Materials furnished.
- C. All Materials furnished by Trinity Metro will remain the property of Trinity Metro. Excess Material not incorporated in the Work, shall be stored on site at a central, accessible location approved by Trinity Metro.

**403 Handling and Storage of Materials**

- A. Materials shall be securely stored, as to preserve their quality and fitness for the Work. Stored Materials, even though determined acceptable before storage, may again be inspected prior to their use in the Work. Stored Materials shall be



arranged so as to facilitate their prompt inspection. Approved portions of the right of way or other Trinity Metro property may be available for use by Contractor. Any additional space required therefore must be provided by Contractor at Contractor's expense. Private property shall not be used for storage purposes without written permission of Trinity Metro or lessee. Any use of private property by Contractor shall comply with all applicable zoning, land use restrictions, and other regulatory requirements. Copies of such written permission shall be furnished to Trinity Metro upon request.

- B. All Materials shall be handled and transported in such a manner as to preserve their quality and fitness for the Work.
- C. Contractor shall be responsible for stored Materials lost, stolen, or damaged and shall promptly replace such lost, stolen, or damaged Materials at no cost to Trinity Metro.

#### **404 Environmental Requirements**

In addition to requirements set forth in other sections of the Contract, including the Scope of Work, Contractor shall ensure that the requirements of this Section are fulfilled and incorporated into its procedures and processes as well as those of any Subcontractors. All materials utilized by Contractor on the Project shall comply with all applicable local, state and federal laws and regulations.

- A. Contractor is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Materials. If Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by Contractor, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Trinity Metro in writing.
  - 1. The term "Hazardous Materials" means any substance or compound, whether solid, liquid or gaseous: (i) which is listed, defined or regulated as a "hazardous substance", "hazardous waste", "extremely hazardous waste", "solid waste", "toxic substance", "hazardous substance", "hazardous material" or "regulated substance" or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law; or (ii) which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, lead, or motor fuel or other volatile organic compounds; or (iii) which causes or poses a threat to cause a contamination or nuisance on the Work Site or any adjacent property, or (iv) which causes or poses a threat to cause a

hazard to the environment or to the health, safety or welfare of persons on or about the Work Site.

2. The term "Environmental Law" means any federal, state or local law, statute, guidance or policy statement, ordinance, code, rule, regulation, license, authorization, decision, order, injunction or decree, which pertains to health, safety or the environment (including, but not limited to, ground, air, water or noise pollution or contamination, and underground or aboveground tanks) and shall include without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act of 1976, as amended, the Occupational Health and Safety Act, the Toxic Substances Control Act, the Texas Water Code and the Texas Solid Waste Disposal Act and any other state or federal environmental statutes.
- B. If the material or substance was on the site prior to the issuance of the Notice to Proceed, Trinity Metro shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, to verify that it has been remediated to levels required by the Texas Commission on Environmental Quality. When the material or substance has been remediated, Work in the affected area shall resume upon written direction of Trinity Metro.
  - C. Except as provided in Subparagraph B., Contractor (with Trinity Metro's prior written approval of the laboratory) shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, Trinity Metro shall determine whether Contractor or Trinity Metro shall have the substance remediated to levels required by the Texas Commission on Environmental Quality. When the material or substance has been remediated, Work in the affected area shall resume upon written direction of Trinity Metro. The Contract time shall not be extended and the Contract Price shall not be increased, unless the material or substance to be remediated were not introduced to the Work Site by Contractor, and Contractor shall then pay for (or reimburse Trinity Metro for) the testing and remediation.
  - D. Trinity Metro shall not be responsible under this Section for materials or substances Contractor brings or introduces to the Work Site. Contractor shall be responsible for the fault or negligence in the disturbance, use and handling of materials or substances of Contractor, Subcontractor, Sub-subcontractor, or anyone directly or indirectly employed by any of them.
  - E. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE INDEMNITEES (AS DEFINED HEREIN IN SECTION 503 "INDEMNIFICATION") FOR ANY AND ALL DAMAGES INCURRED BY TRINITY METRO AS A RESULT OF CONTRACTOR'S ACTIONS WITH**

**RESPECT TO ALL APPLICABLE STATE AND FEDERAL ENVIRONMENTAL LAWS RELATED TO MATERIALS OR SUBSTANCES CONTRACTOR BRINGS TO THE WORK SITE, INCLUDING BUT NOT LIMITED TO FINES, PENALTIES, COSTS OF REMEDIATION AND REASONABLE ATTORNEY'S FEES. NO TIME EXTENSION SHALL BE GRANTED FOR BREACH OF THIS PROVISION.**

- F. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Work Site any Hazardous Materials, except in accordance with applicable environmental laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Materials into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water unless required by the Contract Documents. **IN THE EVENT CONTRACTOR ENGAGES IN ANY OF THE ACTIVITIES PROHIBITED IN THIS SECTION OR FAILS TO STOP WORK AS PROVIDED IN THIS SECTION, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR HEREBY INDEMNIFIES AND HOLD TRINITY METRO AND ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES AND TENANTS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSES, CAUSES OF ACTION, SUITS AND LIABILITIES OF EVERY KIND, INCLUDING BUT NOT LIMITED TO, EXPENSES OF LITIGATION, COURT COSTS, PUNITIVE DAMAGES AND ATTORNEYS' FEES, ARISING OUT OF, INCIDENTAL TO OR RESULTING FROM THE ACTIVITIES PROHIBITED IN THIS SECTION OR CONTRACTOR'S FAILURE TO STOP WORK AS REQUIRED.** Contractor shall obtain from manufacturers and furnish to Trinity Metro Materials Safety Data Sheets (OSHA Form 20) for all materials incorporated into the Project by Contractor. TRINITY METRO hereby agrees that, as between Trinity Metro and Contractor, Trinity Metro will be responsible for Hazardous Materials on site which existed prior to Contractor performing Work on the Work Site or which are introduced to the Work Site by Trinity Metro, except as provided in this Section. Contractor will not be considered the generator of Hazardous Materials on site which existed prior to Contractor performing Work on the Work Site or which are introduced to the Work Site by Trinity Metro. If the Hazardous Materials were on the Work Site prior to Contractor's presence on the Work Site or were introduced to the Work Site by Trinity Metro, then, if appropriate, Trinity Metro will make an equitable adjustment to the Contract.
- G. No request by Contractor for an equitable adjustment to the Contract under this Section shall be allowed unless Contractor has given the written notice required.
- H. No request by Contractor for an equitable adjustment of the Contract for Hazardous Materials will be allowed or shall be made after final payment under the Contract.

**405 Substitution After Award of Contract**

- A. Use of any substitute item must be approved by Trinity Metro in accordance with

the terms of the Contract.

- B. Trinity Metro reserves the right to use the named or specified product or item to establish standards for equality, including aesthetic and visual characteristics, when specified in the technical specifications, performance, quality, availability and maintainability of the proposed product or item.
- C. Substitution will be considered by Trinity Metro when:
  - 1. The substitution is due to the unavailability of specified item;
  - 2. The substitution is required for compliance with a final interpretation of code requirements or insurance regulations;
  - 3. The specified item will not perform as specified;
  - 4. The manufacturer or fabricator does not certify or warrant performance of the specified item as required for its intended purpose; or
  - 5. The substitution is considered, in Trinity Metro's sole judgment, to be beneficial to the completed work.
- D. Contractor shall notify Trinity Metro of any inappropriate or unavailable products, equipment, services or techniques that may be called for by the Contract.
- E. Contractor must submit to Trinity Metro written requests for approval of Substitutions. Trinity Metro will consider only requests conforming to the requirements of this Section.
- F. Trinity Metro will be the sole judge of the acceptability of any proposed substitution. Contractor will be notified in writing of the approval or rejection of a properly submitted request. Contractor will not rely upon approvals made in any other manner. Trinity Metro's decision shall be final.
- G. Requests for substitutions shall be submitted to Trinity Metro through the Contract submittal process in sufficient time to avoid delays to the Work. Contractor shall be responsible for any delay or cost resulting from untimely submittal of substitution requests.
- H. Contractor has the burden of demonstrating that the proposed Substitution's function, quality and performance will be equal in all respects to that of the specified item.
- I. Contractor shall at the same time submit six (6) copies of the information listed below, with any additional information Contractor considers necessary to

support the Bid. The following information is required as a minimum:

1. The reason for the request;
  2. Complete data substantiating that the function, quality and performance of the proposed substitution will be equal or superior in all respects to the performance of the specified item;
  3. The impact of the proposed substitution on the construction schedule;
  4. The effect of the proposed substitution on the Contract price;
  5. The following information shall be included in the documentation for substitution of construction or fabrication methods:
    - a. Detailed description of the proposed methods; and
    - b. Drawings illustrating the proposed methods;
  6. Product identification, including, manufacturer's name and address, contact person and telephone number;
  7. Manufacturer's literature, including product description, performance and test data, and reference standards;
  8. Samples, if appropriate or required by Trinity Metro;
  9. The name and address of a reference person for similar projects, on which the product, equipment service, method or techniques were used, date of installation and reliability and service record, if appropriate or required by Trinity Metro;
  10. An itemized comparison of the proposed substitution with the specified product, equipment, service, method, or technique;
  11. Assurance that the proposed substitution will not affect dimensions or other elements of the work, alternatively, full disclosure of any such effects; and
  12. The name and address of the nearest Supplier of maintenance and service and repair services for the proposed substitution, and substantiation that adequate supplies of parts and repair services are readily available, if appropriate or required by Trinity Metro.
- J. Prior to making a request for a substitution, Contractor shall investigate the

proposed item and determine that it is equal in all respects to the item specified. In making the request for a substitution, Contractor represents that:

1. It will provide the same warranty for the substitution as for the item specified;
  2. It will coordinate installation of the substitution into the Work, making changes as may be required for the Work to be complete in all respects;
  3. Price and schedule data provided is complete and includes all related Contractor cost and schedule impacts;
  4. It waives all claims for additional time for performance and additional costs related to the substitution that may become apparent following Trinity Metro's approval of the substitution; and
  5. It will be responsible for the cost of performing any design or redesign including redesign of other affected parts of the Work and for securing Trinity Metro's approval of such design or redesign.
- K. Only complete requests submitted in accordance with this General Provision will be considered. The approval of Shop Drawings, Product Data, submittals, or other documents indicating or implying a substitution shall not constitute approval of such substitution.
- L. Trinity Metro will specifically approve or disapprove in writing all requested substitutions. If a substitution is approved, a Change Order will be prepared to incorporate the substitution into the Contract. The Change Order will include any associated price or schedule adjustment.
- M. Contractor shall not be entitled to an extension of time or reimbursement for additional costs associated with a substitution proposed due to the unavailability of a specified item. Extensions of time or reimbursement of additional costs for substitutions necessitated by deficiencies which render the specified item unacceptable will not be allowed when the deficiency was known or should have been known by Contractor.

#### **406 Inspection, Sampling and Testing**

- A. Contractor is responsible for performance of the Work and a quality plan including establishment of an inspection system, testing system and maintenance records that document the inspection and quality control activities. Inspection and testing by Trinity Metro does not relieve Contractor of responsibility for the quality and conformance of the work with Contract requirements. Inspections and testing are for the sole benefit of Trinity Metro, and any inspection or testing by Trinity Metro does not (i) relieve Contractor from its responsibility of providing quality control measures; (ii) relieve Contractor of damages to or loss of Material; (iii) constitute or imply acceptance; or (iv) affect Trinity Metro's rights. TRINITY

METRO may inspect and test all or any part of the work at any reasonable time.

- B. Contractor shall furnish Trinity Metro with adequate facilities required for safe access to the work for inspection and sampling and shall provide assistance in obtaining samples. Contractor shall advise Trinity Metro of the name and location of, and ensure that, manufacturers, producers and fabricators of Materials for the Contract provide access to their plants or facilities and provide proper facilities for sampling, inspection, and testing.
- C. Contractor shall give Trinity Metro sufficient notice of the location and availability of elements of the Work to allow for inspection, sampling and testing prior to incorporation of Materials or covering of the Work.
- D. TRINITY METRO may at any time prior to Final Acceptance require Contractor to uncover portions of the Work for inspection and testing. Contractor shall restore these portions of the Work to the standard required by the Contract. If the Work uncovered does not comply with the Contract, was done without required documentation, or if Trinity Metro was given insufficient notice to allow adequate time for inspection, sampling or testing, the uncovering and restoration shall be done at Contractor's expense.
- E. When the United States government participates in the cost of the Work covered by the Contract, or if Trinity Metro has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or may affect third party facilities, or if the Work is by law subject to inspection by any public body or official, properly authorized representatives of these organizations have the right to inspect the work affecting their interest or property. Their right to inspect will not make them a party to the Contract and will not interfere with the rights of the parties to the Contract. Instructions or orders of such parties will be transmitted to Trinity Metro.

**407 Subcontractors and Suppliers**

- A. No subcontract shall relieve Contractor of any of Contractor's obligations or liabilities under the Contract. Contractor shall be fully responsible and liable for the acts or omissions of all Subcontractors and Suppliers including persons directly or indirectly employed by them, their guests and invitees. Contractor shall have sole responsibility for managing and coordinating the operations of its Subcontractors and Suppliers, including the settlement of disputes with or between them.
- B. Nothing contained in the Contract shall be deemed to create a contractual relationship between any Subcontractor or Supplier and Trinity Metro.

- C. Contractor shall provide to Trinity Metro one (1) copy of all executed subcontracts associated with the Contract, including any changes or modifications to the subcontracts, within three (3) days of their execution.
- D. No Subcontractor shall be permitted to perform work associated with the subcontract until the Subcontractor (or Contractor on the Subcontractor's behalf) is in compliance with the insurance requirements specified elsewhere in the Contract, and has furnished satisfactory evidence of insurance to the TRINITY METRO.
- E. A Subcontractor may be rejected by Trinity Metro if they have breached a contractual obligation to Trinity Metro or if that Subcontractor failed to substantially perform the obligation to Trinity Metro or has an unacceptable safety rating, regardless of whether that failure was formally designated a breach of contract by the contracting agency. Failure to complete performance of an obligation on time, including, but not limited to, failure to meet a contract milestone date on a prior Trinity Metro contract, except as excused by Trinity Metro, shall be deemed a failure to substantially perform that obligation.
- F. Contractor shall request in writing Trinity Metro's written approval before replacing a Subcontractor. If Contractor wishes to replace a DBE Subcontractor, Contractor shall use good faith efforts to substitute another qualified DBE Subcontractor. Substitute Subcontractors will be evaluated in the same manner as Subcontractors previously identified.
- G. Contractor agrees that it will not engage or allow the engagement on the Project of any Subcontractors, Subconsultants, or Suppliers that are debarred or suspended, unless the appropriate exceptions under federal regulations have been met. Contractor agrees to review the "System for Award Management" (SAM) at <https://www.sam.gov/portal/public/SAM/>, if required by U.S. Department of Transportation regulations, 2 C.F.R. Part 1200. Contractor agrees to include and require its Subcontractors, Subconsultants, and Suppliers to include a similar condition in each lower tier covered transaction for the Project, assuring that the Subcontractors, Subconsultants, and Suppliers will comply with federal debarment and suspension requirements and review the "Excluded Parties Listing System."

**408 Payments to Subcontractors and Suppliers**

- A. Contractor shall comply with the provisions of applicable laws and regulations relating to Contractor's relations with Subcontractors. Payments by Contractor to Subcontractors and Suppliers with Trinity Metro Contracts are subject to the time periods established in the Texas "Prompt Payment Act", contained in Chapter



2251 of the Texas Government Code.

- B. All persons employed in the performance of the Work under the Contract, or any subcontracts hereunder, shall be paid not less than the general rates of per diem, holiday, and overtime wages prevailing in the locality of the Work of a similar character as detailed in the Special Provisions. Failure to comply with this provision shall subject Contractor to the penalties prescribed in Chapter 2258 of the Texas Government Code, as amended.
- C. Contractor will include in each subcontract for property or services entered into by Contractor and a Subcontractor or a Supplier for purposes of performing the Work under the Contract a payment clause that obligates Contractor to pay the Subcontractor for satisfactory performance under its subcontract within seven (7) days out of such amounts as are paid to Contractor by Trinity Metro under the Contract.
- D. A false certification to Trinity Metro under the provisions of the Payments clause may be a principal offense in violation of Section 37.10 of the Texas Penal Code.
- E. If Contractor has made application for payment to Trinity Metro, Trinity Metro has made payment to Contractor, and Contractor subsequently withholds or retains payments from a Subcontractor; Contractor will be obligated to pay interest to Trinity Metro equal to 12% per annum on the amount due the Subcontractor(s) beginning on the eighth day after Contractor was paid.
- F. Contractor will pay Subcontractors and Suppliers after completion of Subcontractor's work or delivery and acceptance of Materials within seven (7) days after payment from Trinity Metro for said Work and Materials.

**501 Emergency Work**

- A. In the event of an emergency which endangers life or property, Contractor shall take such immediate actions as may be reasonably necessary to safeguard life and property. Contractor shall notify Trinity Metro as soon as possible of the circumstances of the emergency and the actions taken. Contractor shall perform such additional work as may be directed by Trinity Metro either orally or in writing. Such oral orders will be confirmed in writing as soon as practicable.
- B. If Contractor performs emergency work, Contractor shall keep accurate records of actual costs in accordance with the Contract until such time as agreement on compensation is reached. Such records shall be subject to verification and audit by Trinity Metro. Keeping and verification of such records shall not be construed as an indication that all work performed was required or that this method of compensation is necessarily acceptable for such emergency work and shall not preclude the possibility of an agreement to pay for such emergency work on

another basis.

- C. When agreement is reached regarding compensation for the performance of emergency work, the Contract will be amended by issuance of a Change Order reflecting such agreement.
- D. In emergencies affecting the safety of persons or the work or property at the site or adjacent thereto, Contractor, without special instructions or authorization from Trinity Metro is obligated to act at its discretion to prevent threatened damage, injury, or loss. Contractor shall give TRINITY METRO prompt written notice of any significant changes in the Work or deviations in the Contract Documents caused thereby.

#### **502 Risk of Loss**

Unless otherwise provided in the Contract, Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to (a) the Work, (b) for any property of TRINITY METRO delivered to Contractor or for which Contractor has custody or control (including the Work Site), and (c) for any property of TRINITY METRO for which title has passed to Contractor, until TRINITY METRO accepts the property and the care, custody and control thereof. Contractor shall also be solely responsible, as between it and TRINITY METRO for all damages to persons or property that occur as a result of Contractor's fault or negligence, and shall hold TRINITY METRO and its representatives harmless from all such damages and related losses. Contractor shall also be solely responsible for all Work performed until completion and acceptance of the entire Work, except for any completed unit of Work for which TRINITY METRO has expressly accepted care, custody and control and risk of loss under the Contract.

#### **503 Indemnification**

Indemnity obligations are set forth in Paragraphs SP 24.1 through 24.7 of the Special Provisions to this Agreement, are incorporated herein, and shall be considered as both general and special provisions.

#### **504 Bonds and Additional Bond Security**

- A. Contractor shall be required to obtain performance and payment bonds and supply any security acceptable to Trinity Metro as follows:
  - 1. Performance Bonds: The penal amount of performance bonds shall be 100 percent of the Contract Price of any construction Work on the Project and any amendments to the Contract that increase the construction cost, unless Trinity Metro determines that a lesser amount would be adequate

for the protection of Trinity Metro;

2. Payment Bonds: The penal amount of the payment bonds shall be 100 percent of the Contract Price of any construction Work on the Project and any amendments to the Contract that increase the construction cost, unless Trinity Metro determines that a lesser amount would be adequate for the protection of Trinity Metro;
  3. Trinity Metro may, at its option and by notice to Contractor, require additional performance and payment bond protection if the Contract Price is increased;
  4. The increase in protection shall generally equal 100 percent of the increase in Contract Price;
  5. Trinity Metro may secure such additional protection by directing Contractor to increase the penal amount of the existing bond or to obtain an additional bond;
  6. Contractor shall furnish all properly executed bonds (including additional or increased bonds required by this section) to Trinity Metro within the time period specified in the Contract or any notice from TRINITY METRO requiring any increased or additional bonds under this Section;
  7. The surety company or companies providing the bonds must be authorized to conduct business in the State of Texas; shall be approved for the amount of the bonds and shall either hold a certificate of authority from the U.S Department of Treasury or have obtained reinsurance in accordance with the requirements of Chapter 3503 of the Texas Insurance Code; and
  8. Contractor shall be required to submit all required bonds within ten (10) days from the date of notice of the award or Trinity Metro may terminate Contractor for default.
  9. Performance and payment bonds shall meet all statutory requirements of the State of Texas (including Chapter 53 of the Texas Property Code and Chapter 2253 of the Texas Government Code.
- B. In addition to any increased or additional bonds required by Trinity Metro pursuant to Section A above, Contractor shall promptly furnish additional bonds or security acceptable to Trinity Metro required to protect Trinity Metro and persons supplying labor or Materials under the Contract if:
1. Any surety upon any bond, or issuing financial institution for other

security, furnished with the Contract becomes unacceptable to Trinity Metro;

2. Any surety fails to furnish reports on its financial condition as required by Trinity Metro;
3. The Contract Price is increased so that the penal sum of any bond becomes inadequate in the opinion of Trinity Metro; or
4. An irrevocable letter of credit used as security will expire before the end of the period of required security. If Contractor does not furnish an acceptable extension or replacement irrevocable letter of credit, or other acceptable substitute, at least thirty (30) days before an irrevocable letter of credit's scheduled expiration, Trinity Metro has the right to immediately draw on the irrevocable letter of credit.

#### **505 Required Insurance**

Contractor shall incorporate all the provisions of this Section into any and all subcontract agreements of any tier and shall require its Subcontractors and Suppliers to cooperate fully with Trinity Metro, its representatives, agents and assigns.

For any work under this Contract, and until Final Acceptance of the Work, Contractor, at its own expense, must promptly furnish to Trinity Metro's Insurance Administrator, certificates of insurance giving evidence that the following coverage is in force.

##### **1. Automobile Liability Insurance**

Commercial Automobile Liability insurance is required which covers the use of all owned, non-owned, and hired vehicles that are used in connection with the Project with limits and terms of not less than the following:

- a. \$1,000,000 Bodily Injury — Per Person
  - b. \$1,000,000 Bodily Injury — Per Accident
  - c. \$1,000,000 Property Damage — Per Accident or
  - d. \$1,000,000 Combined Single Limit; and
  - e. MCS-90 endorsement required for transporting hazardous materials or waste
  - f. Endorsement removing exclusions for operations within 25 feet of a railroad
- Coverage applies to both on-site and off-site activities.

##### **2. Worker's Compensation Insurance**

Worker's Compensation Insurance is required with statutory limits with All States endorsement and Employer Liability Limits and terms of not less than the following:

- a. \$1,000,000 Bodily Injury with Accident — Each Accident
- b. \$1,000,000 Bodily Injury by Disease — Policy Limit

- c. \$1,000,000 Bodily Injury by Disease — Each Employee  
Applies to both on-site and off-site activities

### 3. Commercial General Liability Insurance

Commercial General Liability Insurance is required with limits and terms as follows:

- a. Combined Bodily Injury and Property Damage Limit of \$10,000,000 per occurrence, \$10,000,000, General Aggregate, \$10,000,000 Products and Completed Operations, including the following terms, conditions and endorsements:
  - i. Occurrence Basis
  - ii. No Exclusions for Demolition Work
  - iii. Contractual Liability endorsement
  - iv. Products/Completed Operations to remain in place 5 years after project completion
  - v. Additional insured endorsements for ongoing and completed operations
  - vi. Broad Form Property Damage;
  - vii. No exclusion for Independent Contractors.
  - viii. Primary and Non-Contributory Endorsement
  - ix. Endorsement removing exclusions from contractual liability coverage for operations within 25 feet of a railroad
- 4. Builder Risk Insurance covering all risks of direct physical loss, in an amount of insurance equal at all times to the replacement value of materials delivered and labor performed. The policy shall be insured jointly in the names of the Contractor and Trinity Metro.
  - a. TRINITY METRO and its directors, officers, representatives, agents, employees, Consultants, Dallas Area Rapid Transit, Herzog Transit Services, Inc., Herzog Technologies Inc., BNSF Railway Company, and National Railroad Passenger Corporation (“Amtrak”), Dallas, Garland and Northeastern Railroad and Union Pacific shall be endorsed as additional insureds.
  - b. Coverage applies to off-site activities

### 5. Contractor’s Equipment

Contractor and Subcontractors of any tier shall insure or self-insure risk of loss or damage to equipment, tools, or personal effects, owned, rented, leased or borrowed to or in the care, custody or control of Contractor, Subcontractor(s) of any tier, or any person(s) furnishing labor or Materials. TRINITY METRO will not be responsible for any loss or damage to, or for obtaining insurance for equipment, tools, or personal effects, owned, rented, or leased to or in the care, custody or control of Contractor or Subcontractors of any tier.

#### 6. Additional Insureds

The Contractor required insurance (except for Workers' Compensation and Professional Liability insurance) shall include provisions or endorsement naming Trinity Metro, its Consultants, Dallas Area Rapid Transit, Herzog Transit Services, Inc., Herzog Technologies Inc., BNSF Railway Company, and National Railroad Passenger Corporation ("Amtrak"), Dallas, Garland and Northeastern Railroad and Union Pacific and their representatives, officers, Board Members, directors, and employees as additional insureds with respect to Work or operations connected with the Contract for insurance required under this Section.

#### 7. Certificates of Insurance

Prior to commencing work and within ten days of NTP issued, Contractor shall provide Trinity Metro with Certificates of Insurance evidencing the insurance required under the Contract. The Certificates shall include Contractor's name, name of the Contract, TRINITY METRO's Contract number, and reference to all of the provisions and endorsements required by this Section. The Certificates shall be signed on behalf of the insurer by its Authorized Representative. If requested in writing by Trinity Metro, Contractor agrees to furnish copies of such policies, or policy forms, certified by an Authorized Representative of the insurer.

Contractor and its Subcontractors of any tier will provide Trinity Metro's Insurance Administrator with a certificate of insurance setting out the above coverage, limits, and amendments to the certificate necessitated by changes to the Work to be performed under the Contract until the date of final payment.

All required certificates shall be forwarded to the insurance administrator at the following address:

TRINITY METRO  
Attention: Procurement  
801 Grove Street  
Fort Worth, Texas 76102

#### 8. Insurance in Force

The Contractor provided insurance and additional insured endorsements on such policies shall remain in force until the Work described in the Contract has been completed and accepted by Trinity Metro, or in any event, not less than of one year after Final Acceptance of the Work. If for any reason insurance coverage is not kept in force, all Work will be stopped until an acceptable Certificate of Insurance is provided to Trinity Metro.

#### 9. Notice of Cancellation

Insurance policies and certificates of insurance shall specifically provide that a thirty (30) day notice of cancellation, non-renewal, or material change be sent to the Insurance Administrator:

TRINITY METRO  
Attention: Procurement

801 Grove Street  
Fort Worth, Texas 76102

#### 10. Waiver of Subrogation

To the extent a loss is covered by Contractor provided insurance required herein, Contractor agrees to waive all rights of subrogation or recovery against TRINITY METRO, its Consultants, Trinity Railway Express, Fort Worth & Western Railroad, Dallas Area Rapid Transit, Grapevine Vintage Railroad, Amtrak, Kansas City Southern Railroad, Dallas, Garland and Northeastern Railroad, and Contractor's Subcontractors of any tier, performing Work on the Project. Contractor shall ensure that all its Subcontractors shall provide the same waiver. Contractor shall require all policies of insurance that are in any way related to the Contract and that are secured and maintained by Contractor and all tiers of Subcontractors to include clauses providing that each underwriter shall waive all of its rights of recovery, under subrogation or otherwise, against Trinity Metro, Trinity Metro's Consultants, Trinity Railway Express, Fort Worth & Western Railroad, Dallas Area Rapid Transit, Grapevine Vintage Railroad, Amtrak, Kansas City Southern Railroad, Dallas, Garland and Northeastern Railroad, and their representatives, officers, Executive Committee Members, directors and employees.

#### 11. Approval of Forms and Companies

All insurance described in this Contract shall be written by an insurance company or companies satisfactory to Trinity Metro, and shall be in a form and content satisfactory to Trinity Metro. No party subject to the provisions of this Contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein. A Best's rating of A- or better is required of all companies that provide insurance on the Project.

#### 12. Contractor Expense

Any type of insurance or any increase of limits of liability not described above that Contractor or its Subcontractor of any tier requires for its own protection or on account of any statute shall be its own responsibility and at its own expense.

#### 13. No Release

The carrying of the above-described insurance shall in no way be interpreted as relieving Contractor of any other responsibility or liability under this agreement or any applicable law, statute, regulation or order.

### **506 Drug Free Workplace**

Contractor is required to maintain a drug free workplace. For purposes of this clause, the workplace is the site for the performance of work done in connection with the Contract.

A. Definitions – As used in this clause, the following terms means:

1. "Alcohol" – Ethyl alcohol and any beverage containing ethyl alcohol.

2. "Controlled Substance(s)" means a substance including drug and an immediate precursor noted in Schedules I through V of subchapter A of the Tex. Controlled Substances Act, Tex. Rev. Civ. Stat. Ann Articles 481.032 – 481.036. These substances, include, but are in no way limited to the following: marijuana, heroin, cocaine, LSD, concentrated cannabis, hashish, hash oil, morphine or its derivatives, mescaline peyote, phencyclidine (PCP, Angel Dust), opium, opiates, methadone, Quaaludes, amphetamines, "exotic" or "designer" drugs, benzodiazepines, codeine, barbiturates, phenobarbital or valium.
  3. "Drug Free Workplace" means any site for the performance of work done in connection with the Work of the contract with Trinity Metro and at which all employees are prohibited from using alcohol or from engaging in unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
  4. "Employee means an employee of Contractor or Subcontractor who may be directly engaged in the performance of work under the Contract with Trinity Metro.
  5. "Reasonable Suspicion" means the presence or absence of specific intena identified in Contractor's drug-free workplace program, which indicates the possibility that a person(s) is under the influence of alcohol or a controlled substance as observed by Contractor's supervisory personnel or supervisor of Trinity Metro.
  6. "Safety Sensitive Task" means any category of work performed which, if performed by an impaired person (under the influence of drugs or alcohol would pose a serious risk of personal injury or death to the employee or others; or could compromise the quality of the Work of the Contract; or could pose a safety risk with Trinity's Metro operation of its public transportation system or rail line.
- B. Contractor shall implement a Drug-Free Workplace Program, with minimum standards as set forth herein. Contractor's program shall provide for mandatory drug testing of employees (a) no more than seven (7) days prior to an employee's assignment of the work of the Contract for safety sensitive tasks; (b) as part of follow up counseling or rehabilitation; and (c) as part of a voluntary employee drug testing program.
- C. The program may, at Contractor's discretion, include mandatory employee drug testing under the following circumstances:
1. As part of or as a follow-up to counseling or rehabilitation for controlled



substance use; or

2. As part of a voluntary employee drug testing program.
- D. A random testing procedure to detect the use of alcohol or a controlled substance by employees performing safety sensitive tasks is required as part of Contractor's program for the purpose of preventing or deterring hazardous performance. The procedure shall require that, at a minimum, five percent (5%) of Contractor's employees will be randomly tested within the Contract period or within each year of the contract period, whichever period is shorter.
- E. All testing by or on behalf of Contractor because of a requirement in the Contract shall be conducted only for employees engaged (or to be engaged) in safety sensitive tasks and only for use of alcohol or a controlled substance and shall be conducted in a manner and under written policies that minimize the intrusion on the employee's privacy and personal dignity. This provision shall not preclude Contractor from adding its own additional testing requirements.

Contractor shall notify Trinity Metro if an employee or potential employee who is or will be assigned to the Work of the Project becomes ineligible for continued employment on the Project either as a result of random testing, tests positive prior to the assignment, post-accident testing or other employer sponsored testing. Contractor will not assign to the Project any employee who is determined to be ineligible during the initial screening process for Trinity Metro's Project.

- F. Contractor shall publish a statement notifying employees that the use of alcohol at the workplace or the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance by employees at any time is prohibited and specifying the actions that will be taken against employees for violations of such prohibition.
- G. The program must require each employee who will perform a safety sensitive task, prior to working under Trinity Metro's Contract to:
1. Acknowledge in writing Contractor's drug-free workplace program; and
  2. Give advance written consent to any drug testing that may be conducted under Contractor's program and to the use of test results for decisions related to employment, disciplinary action, or continued employment. Contractor will agree, in connection with the employee's consent, that the results of testing for alcohol and controlled substances will not be voluntarily referred to any law enforcement agency. If Contractor is subject to a collective bargaining agreement:
    - a. the procedure for obtaining the individual employee's

acknowledgment and consent must be consistent with Contractor's obligations under the collective bargaining agreement; and

- b. employees shall have the right to be accompanied by a union representative when any specimen is obtained for testing.
- H. Contractor will establish a drug-free awareness program to inform its employees about:
1. The dangers of drug abuse in the workplace;
  2. Contractor's policy of maintaining a drug-free workplace;
  3. Any available drug counseling, rehabilitation, and employee assistance programs; and
  4. The penalties that may be imposed upon employees who refuse to submit to required testing and for other violations of the drug-free workplace program including, but not limited to, being unable to remain employed at the workplace until approval to return is obtained from Trinity Metro.
- I. Contractor's drug-free workplace program shall, at a minimum, include:
1. Policies and procedures for specimen collection, chain of custody for specimens, laboratory qualification standards, laboratory analysis procedures, quality control requirements, and test result reporting procedures which substantially conform to the material requirements of the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the U.S. Department of Health and Human Services in effect on the date of award of the Trinity Metro's construction contract;
  2. Procedures for Contractor's employees to report their use of prescription drugs used in the course of medical treatment or which have been prescribed and authorized for use by a licensed medical practitioner;
  3. The criteria Contractor's will use for "reasonable suspicion" testing; and
  4. The levels of alcohol or controlled substances which will be used in conjunction with a determination that an employee is "under the influence" or is "impaired by the effects of" alcohol or controlled substance(s).
- J. Contractor shall display a notice, prominently placed near each entrance to the

workplace, stating that, by entering the premises, persons are consenting to an inspection of themselves and their property including, but not limited to, their clothing, vehicles, briefcases, lunch boxes, tool boxes, purses, and packages.

- K. Contractor agrees to use its best efforts to establish and maintain a work environment free of use by employees of alcohol or controlled substances through implementation of the program requirements. Contractor shall prepare and maintain records in sufficient detail to demonstrate compliance with the requirements of this clause including, but not limited to, certifications from Subcontractors and records of drug or alcohol tests conducted during performance of the Contract. Such records shall be subject to inspection and audit by Trinity Metro, and Contractor's noncompliance may authorize TRINITY METRO to withhold all or any portion of any payments due Contractor until Contractor demonstrates compliance.
- L. A Drug-Free Workplace Program clause identical to this clause (except for changes appropriate for designation of the parties), including this subparagraph, will be included in every subcontract entered into in connection with the Contract.
- M. Employees testing positive for illegal drug use, shall be prohibited from working and/or being assigned to any Trinity Metro construction project for a one (1) year i.e., 365 days period, beginning from original test failure date. After the one (1) year prohibition period has elapsed, the individual may re-test; and if achieves a negative drug test, then he/she can be granted access to the Project.

#### **507 Safety and Precaution**

- A. At all time, Contractor shall comply with Trinity Metro's Construction Safety Manual in Section 8 as minimum safety requirements. Contractor's failure to comply with TRINITY METRO's Construction Safety Manual shall be deemed a material default under the Contract. Contractor shall take proper safety and health precautions to protect the Work, the workers, the public and the property of TRINITY METRO and of all third parties who may be affected by prosecution of the Work.
- B. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and shall take all necessary actions, including implementation of the requirements of Trinity Metro Construction Safety Manual in order to prevent damage injury, or loss to:
  - 1. All employees on the Work and other persons who may be affected thereby;

2. All the Work and all equipment and Materials to be incorporated therein, whether in storage on or off the Work Site; and
  3. Other property at the Work Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities except as designated for removal, relocation, or replacement as part of the Work.
- C. The Work shall be performed under methods and conditions in full compliance with Construction Safety and Health Regulations of the U.S. Occupational Safety and Health Administration, the State of Texas or local laws, wherever more rigid.
  - D. Contractor shall immediately investigate and analyze the circumstances leading to an accident and make any changes to the Work methods and conditions in order to prevent future accidents. Contractor shall maintain accurate records of all accidents incident to Work performed under the Contract resulting in death, traumatic injury, occupational disease or damage to property, Materials, supplies or equipment.
  - E. Contractor's duties and responsibilities for the safety and precaution of the Work shall continue until such time as the entire Work is completed and Final Acceptance has been made. Contractor shall coordinate its work with TRINITY METRO.
  - F. Trinity Metro retains the right, but does not have the responsibility, to consent to and conduct on-site inspections pursuant to federal, state and municipal government occupational safety and health law requirements. This includes, but is not limited to, all accidents, investigations, general schedule, complaints and follow-up safety and health inspections conducted by federal, state, local government and Trinity Metro safety and environmental health officials.
  - G. TRINITY METRO has the right to stop Work for any safety related issues. Trinity Metro, when it considers doing so is warranted, will notify Contractor of any noncompliance with safety requirements and the corrective action required. This notice, when delivered to Contractor, shall be deemed sufficient notice of noncompliance and corrective action. If Contractor fails or refuses to take corrective action promptly, Trinity Metro may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

#### **601 Changes in the Work**

- A. TRINITY METRO may, at any time, without notice to the sureties if any, by written order designated or indicated to be a change order, make changes in the Work within

the general scope of the Contract and such changes shall not be considered as waiving or invalidating any conditions or provisions of the Contract or the bonds, including, but not limited to, changes:

1. In the Plans and Specifications;
  2. In the method or manner of performance of the Work;
  3. In TRINITY METRO furnished facilities, equipment, Materials, services, or site; or
  4. Directing acceleration in the performance period for the Work.
- B. Contractor shall notify Trinity Metro in writing within three (3) days of when Contractor has received direction, instruction, interpretation or determination from any source which Contractor believes may cause a change in cost or time required for the performance of the Work. Such written notification shall state:
1. The date, circumstances, and source of the order, and
  2. That Contractor regards the order or action as a change. Such notice shall be given to Trinity Metro and Contractor must receive TRINITY METRO's written confirmation thereof before Contractor acts on said direction, instruction, interpretation or determination.
- C. Contractor may request additional time or additional compensation or both for Work through a change order.
- D. If Trinity Metro determines that any change under this Section causes an increase or decrease in Contractor's cost of, or the time required for, the performance of any of the Work under the Contract, Trinity Metro will make an equitable adjustment and modify the Contract by a written Change Order.
- E. For a change requested by Trinity Metro or Contractor, Contractor shall submit, within 14 days of the request, a detailed price and schedule Proposal supported with documentation that reflects all cost and time related impacts on the Contract. The Proposal shall include a complete breakdown of direct costs of both deletions and additions directly attributable to the proposed change in the Work, itemizing labor, Materials, equipment, and any other eligible direct costs.

Changed work shall be calculated as follows:

1. Calculation of Direct Costs
  - a. Material quantities by trades and unit costs. (Manufacturing burden associated with material fabrication performed will be considered to be part of the material costs of the fabricated item delivered to the job site.)
  - b. Labor breakdown by trades and unit costs identified with specific

items of material to be placed or operation to be performed.

- c. Construction equipment exclusively necessary for the change.
  - d. Costs of preparation and/or revision to shop drawings resulting from the change.
  - e. Employment taxes under FICA and FUTA.
  - f. Bond Costs – when size of change warrants revision.
2. Contractor is entitled to a mark-up of ten percent (10%) for overhead and five percent (5%) for profit on the Change Order amounts except Contractor is not entitled to five percent (5%) profit on the profit of any Subcontractor.
  3. Contractor shall submit with the Proposal its request for time extension, if any, and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the Contract in its entirety.
- F. Trinity Metro and Contractor shall negotiate a settlement of the time and cost related impacts of the change. A negotiated change order shall set out prices, scheduling requirements, time extensions and all costs of any nature arising out of the change. The execution of a change order by both parties will be deemed as accord and satisfaction of all claims of any nature arising from or relating to the change.
- G. Cost Reimbursable (Force Account) Work

In the event that Contractor and Trinity Metro are unable to agree on the amount of any adjustment to be made to the contract price or time, Trinity Metro may order Contractor to proceed with the performance of the Work in question pursuant to a unilateral change order issued by Trinity Metro. Such Work will, at Trinity Metro's option be paid for as cost reimbursable work. Contractor when so ordered shall proceed with the Work. When additional work is ordered by Trinity Metro to be performed on a cost reimbursable basis, Work so performed and accepted will be calculated in the following manner:

1. Direct Labor
  - a. For all labor engaged in the specific operation, Contractor will receive the actual wages paid on the Contract for each hour that the labor is actually engaged in work.

- b. The actual cost of the accident and unemployment compensation premiums, the actual cost of any health, welfare, pension, or collective bargaining agreement benefits paid, computed on the base rate for the class of work involved for the actual amount of the payroll.
  - c. No overtime premium will be paid, unless prior written authorization has been given by Trinity Metro, and then only the premium portion of the overtime will be paid, with no additional benefits or overhead.
2. Materials: For all Materials and prices approved by Trinity Metro prior to placement of any order and used in the specific work, Contractor will receive the actual cost of Materials, including freight charges, as shown by the original receipted bills for Materials and freight.
  3. Contractor Owned or Leased Equipment: Payment for the use and operation of equipment owned or leased by Contractor will be made for all construction and automotive equipment required in the performance of the change. Such charges will not include charges for any item of equipment or tool with a new cost of five hundred dollars (\$500.00) or less each.
  4. For equipment owned or leased by Contractor, the use and operation rates will be the actual cost to Contractor for the ownership of such equipment. Those rates will be applied as follows:
    - a. Use of the equipment will be computed and charged as follows: The monthly rental base rate for the equipment will be multiplied by the shift rate adjustment factor and the resulting product divided by 176 hours/month to yield the hourly rental rate.

$$\text{Hourly Use Rate} = \frac{\text{Monthly Rental Rate} \times \text{Shift Adjustment Factor}}{176 \text{ hours / month}}$$

- b. The hourly use rate for the equipment is multiplied times the actual number of hours the equipment is used in the conduct of the changed Work.
- c. The application of regional adjustment factors is hereby excluded.
- d. Normal working conditions will be assumed unless otherwise approved by Trinity Metro.

- e. Use of the equipment for second or third shifts will be at 50% of the first shift rate established above.
- f. Unless otherwise agreed, the costs of fuel, lubricants, tires, other expendables, repair parts, service and maintenance will be charged at the actual cost expended and utilized on the Project.
- g. No payment for transportation costs will be made if the equipment brought to the site for changed work is also used on Contract Work items.
- h. Equipment standby time, if approved by TRINITY METRO, will be paid for at twenty-five percent (25%) of the applicable rental rate.

#### 5. Outside Rental Equipment

If Contractor owned or leased equipment is not available and equipment is rented from an outside source, payment will be made on the basis of actual invoiced cost, less any discount allowed by the renting source. Use of outside rental equipment at rates higher than the actual cost of use of the equipment, will not be allowed unless approved in writing in advance by Trinity Metro.

#### H. Subcontract and Outside Special Services:

- 1. If TRINITY METRO and Contractor agree that a certain item of work or service under cost-reimbursable work cannot be adequately performed by Contractor's forces, such work or service may be performed by a Subcontractor or outside specialist. Where the cost reimbursable work necessitates fabrication or machining work by Contractor away from the Work Site, charges for such work may, by prior written agreement between TRINITY METRO and Contractor, be accepted as a specialist billing. Costs for work performed by Subcontractors will be computed in the same way as if Contractor did the work.
- 2. For the purposes of this Subparagraph, "Subcontractor billing amount" means the amount due under this Subparagraph to the Subcontractor that actually performed the work.
- 3. Percentage Allowances - Overhead and profit will be paid as shown under paragraph E.2., above.

#### I. Cost Reimbursable Invoices

- 1. Time charged to cost reimbursable work will be submitted daily to Trinity Metro for approval. Such time sheets will be submitted in duplicate by noon



- of the workday following the day on which the work was performed. One copy will be returned to Contractor; the other will be retained by Trinity Metro. Contractor will submit evidence of Trinity Metro's approval of time sheets with its invoice.
2. Invoices for cost reimbursable work will show in payroll form the dates, names, hours worked each day, rates of pay, and amounts paid for each individual employed on such work, and include, in detail, the nature of the work performed by each employee.
  3. Invoices for Materials shall be fully itemized showing dates of delivery, quantities, unit prices, amounts, and discounts, and must be accompanied by vendor invoices covering each item.
  4. Invoices for equipment rental must be fully itemized showing a complete description including size and capacity of equipment, the number of hours operated each day, the rental rates and amounts for each individual piece of equipment used on such work, and any discount allowed.
  5. All invoices, payrolls, and other forms of requests for payment on cost reimbursable work will be submitted in duplicate with the progress payment request. Payment request will state the Contract number and the cost reimbursable work order or change order number under which the work was performed.
  6. Failure to present requests in proper form within 60 days after the close of the month in which the cost reimbursable work was performed will constitute a waiver by Contractor of its right to present such claim thereafter or to receive payment therefore.
- H. Contractor shall proceed with work ordered under this Section in a timely manner so as to avoid delay and minimize any increase in time required for performance of the work but, in no event, shall Contractor proceed with such Work without a fully executed change order or written order from TRINITY METRO to so proceed. An inadvertent payment made by TRINITY METRO for work not specifically authorized in writing by TRINITY METRO shall not be evidence or acknowledgment of TRINITY METRO's liability.
- I. Except as provided in this Section, no order, statement, or conduct of TRINITY METRO shall be treated as a change under this Section or entitle Contractor to an equitable adjustment.
- J. No Proposal by Contractor for equitable adjustment shall be allowed if asserted after final payment under the Contract.
- K. In no event will Contractor be entitled to compensation for loss of anticipated profits or for consequential damages, resulting from changes.

- L. In addition to TRINITY METRO, Contractor shall sign the change order documents to verify the terms and conditions established by the change order; however, failure or refusal of Contractor to sign a change order will not relieve Contractor of its obligation to execute the proposed changes in accordance with this item and the other terms and provisions of the Contract. Each change order shall be specific and final as to prices and the extension of time, if any, and no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and compensated in the change order.

**602 Minor Adjustments in the Plans and Quantities**

- A. Contractor is responsible for completing the Work in accordance with the Plans and Specifications including all necessary quantities of Materials and work.
- B. TRINITY METRO reserves the right to make minor adjustments in construction details shown on the Plans or required by the Specifications when:
  - 1. The character of the work performed is the same or substantially the same as other Work required under the Contract; or
  - 2. There is no difference in the quantity of Work required; or the difference in the estimated quantity of Work required does not exceed plus or minus 15% of the original Contract quantity and the net total of all adjustments does not exceed plus or minus 15% of the original Contract quantity.
- C. Compensation for minor adjustments in the Plans or Specifications made in accordance with this Section will be made by adjusting the pay quantity of the appropriate pay item or previously priced item for the actual increase or decrease in quantity attributable to the adjustment.
- D. An adjustment as described in this Section will be directed by change order and will provide an estimate of the magnitude of the adjustment and the proposed method of compensation.

**603 Value Engineering Change Proposals**

- A. Trinity Metro encourages Contractor to submit Value Engineering Change Proposals (VECP) in order to avail Trinity Metro of potential cost savings. Contractor and Trinity Metro will share any savings in accordance with this Section. Contractor is encouraged to submit VECPs whenever it identifies potential savings or improvements.
- B. This paragraph applies to a Contractor-developed and documented VECP which:

1. Requires a change to this Contract to implement the VECP; and
  2. Reduces the Contract amount without impairing essential functions or characteristics of the Work, provided that it is not based solely upon a change in specified quantities.
- C. Contractor shall submit VECPs directly to Trinity Metro. As a minimum, the following information shall be submitted by Contractor with each VECP:
1. Description of the existing Contract requirements, which are involved in the proposed change;
  2. Description of the proposed change;
  3. Discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item;
  4. Itemization of the Contract requirements, which must be changed if the VECP is accepted (e.g., drawing numbers and specifications);
  5. Justification for changes in function or characteristics of each affected item, and effect of the change on the performance of the end item;
  6. Effect of proposed change on life-cycle costs, including operation, maintenance, replacement costs, and life expectancy;
  7. Date or time by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on Contract completion time or delivery schedule; and
  8. Cost estimate for existing Contract requirements correlated to Contractor's unit price or lump sum breakdown and the proposed changes in those requirements. Costs of development and implementation by Contractor shall be provided. Additional costs to Trinity Metro (e.g., costs of testing, redesign, and effect on other contracts) shall also be estimated.
- D. Trinity Metro retains the right to reject a VECP without review, without recourse by the Contractor, if a similar change is already under review, or if, in Trinity Metro's sole opinion, the potential savings are unlikely to justify the cost of the review, or if the proposed change is otherwise unacceptable to Trinity Metro.
- E. Trinity Metro will expeditiously process proposals accepted for review but shall not be liable for any delay in acting upon any proposal submitted pursuant to this

Section. Trinity Metro may accept, in whole or in part, by Change Order, any VECP submitted pursuant to this Section. Until a Change Order is issued on a VECP, Contractor shall remain obligated to perform in accordance with the original Contract. Trinity Metro's decision as to acceptance or rejection of any VECP shall be at Trinity Metro's sole discretion and shall be final and not subject to review by disputes process or otherwise.

- F. If a VECP submitted by Contractor pursuant to this Paragraph is accepted, the Contract price shall be adjusted in accordance with the following provisions:
1. Definitions
    - a. Estimated gross savings to Contractor (GS) means the difference between the cost of performing the work according to the existing requirement and the cost to perform it according to the proposed change. In each instance, Contractor's profit shall not be considered part of the cost.
    - b. Contractor cost (CC) means reasonable costs incurred by Contractor in preparing the VECP and making the change, such as cancellation or restocking charges.
    - c. Estimated net savings to Contractor (NS) means gross savings (GS) less Contractor costs (CC).
    - d. Trinity Metro's Costs (TC) means reasonable costs incurred by Trinity Metro in evaluating and implementing the VECP, such as testing, redesign, and effect on other contracts.
  2. Calculations: The Contract amount shall be reduced by an amount equal to 50% of (NS) plus 50% of (TC), expressed by the formula  $\text{Reduction} = 0.5 (\text{NS}) + 0.5 (\text{TC})$
  3. Contractor's profit shall not be reduced by application of the VECP.
- G. Contractor shall include appropriate value engineering incentive provisions in all subcontracts of \$25,000.00 or greater. In determining Net Savings for cost reduction proposals, which involve a subcontractor, only actual costs to Contractor and Subcontractor as defined in Paragraph 'F' will be allowed as a Contractor Cost. Incentive payments made to the Subcontractor by Contractor in connection with the cost reduction proposal will not be allowed in determining Net Savings.
- H. Restrictions. Contractor may restrict the Trinity Metro's right to use VECP data by marking it with the following statement: "This data furnished to the Value

Engineering Article of the Contract, shall not be duplicated, used or disclosed in whole or in part, for any purpose except to evaluate the VECP, unless the proposal is accepted by Trinity Metro. The restriction does not limit Trinity Metro's right to use information contained in this data if it is or has been obtained, or is otherwise available, from Contractor or from another source, without limitations. When this proposal is accepted by Trinity Metro, Trinity Metro shall have the right to duplicate, use, and disclose any data in any manner, and for any purpose whatsoever, and may allow others to do so whether under this or any other Contract."

- I. The compensation provisions of this Section constitute Contractor's exclusive and complete compensation for Trinity Metro's use of the VECP and Contractor shall have no right to additional compensation for future or additional uses of the VECP. Trinity Metro shall have an absolute and unrestricted right to use the VECP for any purpose other than on the Contract or contracts for which it was submitted.

#### **604 Alternative Methods of Construction**

Whenever the Plans or Specifications provide that more than one specified method of construction or more than one specified type of material or construction equipment may be used to perform portions of the Work and leave the selection of the method of construction or the type of material or equipment to be used up to Contractor, it is understood that Trinity Metro does not guarantee that every such method of construction or the type of material or equipment can be used successfully throughout all or any part of the Work. It shall be Contractor's responsibility to select and use the alternative or alternatives, which will satisfactorily perform the Work under the conditions encountered. In the event some of the alternatives are not feasible or it is necessary to use more than one of the alternatives in the Work, full compensation for any additional cost involved shall be considered as included in the Contract price paid for the item of Work involved and no additional compensation will be allowed thereafter.

#### **605 Quality Control and Compliance with Contract Requirements**

- A. Materials furnished and Work performed by Contractor shall conform to details shown on the Plans and Specifications, and requirements given in the Contract.
- B. Contractor has primary responsibility for inspection and testing of all Materials required in the performance of the Contract. The foregoing provision notwithstanding, Trinity Metro may perform check testing and periodic inspections at its cost to verify adequacy of Contractor quality control or for any other purpose. Trinity Metro reserves the right to reject Work and Materials on the basis of any instituted inspection and testing.
- C. Materials furnished or work performed, which does not comply with Contract

requirements, will be considered non-conforming. Non-conforming work includes, but is not limited to:

1. Work done or products incorporated beyond lines shown on the Plans and Specifications or as established by Trinity Metro;
2. Work done or products incorporated contrary to Trinity Metro's instructions;
3. Work changed or added without Trinity Metro's written authorization;
4. Work, which includes incorporation of unapproved substitutions or unapproved Materials;
5. Work performed or Materials furnished without the equipped testing, inspection or other conformance documentation or without required warranties; and
6. Work or Materials not in conformance with the Contract requirements.

D. When non-conforming Work is discovered, Trinity Metro may:

1. Reject the Materials or Work or require its correction. Contractor shall satisfactorily correct rejected Work or satisfactorily replace rejected Materials at Contractor's own expense and promptly segregate and remove rejected Materials from the work site and properly dispose of them. If Contractor fails to promptly replace rejected Materials or correct rejected Work, Trinity Metro may, by Contract or otherwise, remove and replace such rejected Materials or Work, correct such Materials or workmanship, and dispose of all rejected Materials and Work so removed, charging the cost thereof to Contractor, or Trinity Metro may terminate Contractor's right to proceed in accordance with the Termination for Default provision in the Contract. Contractor and its sureties shall be liable for any costs and damages occasioned thereby; or
2. Accept the Materials or Work as suitable for the intended purpose, document the basis of such acceptance, and deduct an equitable amount from the Contract price for uncorrected Work.

#### **606 Warranty of Work**

- A. Contractor warrants that the Work, and any portion thereof performed pursuant to the Contract, shall be of the quality specified, or of the best grade if no quality is specified, and shall conform to the Plans, Specifications, Samples, and other descriptions set forth in the Contract. Unless otherwise provided in the Contract,

Contractor warrants all Materials furnished by Contractor and its Subcontractors, and all Work performed by Contractor and its Subcontractors to be free of defects and faults for a period of one (1) year from the date of Final Acceptance of the Work by Trinity Metro. Contractor's warranty shall apply regardless of any lesser period of warranty provided by the manufacturer of Materials furnished by Contractor. The warranty on any repair, rework or replacement as a result of a warranty claim or damage shall be one year from the acceptance of the repairs, rework or replacement.

- B. Upon receipt of written notice from Trinity Metro of a breach of warranty during the applicable warranty period, Contractor shall redesign, repair or replace any defect or deficiency in the Work in a manner satisfactory, and shall perform such tests as Trinity Metro may require to verify that such redesign, repair or replacement complies with the requirements of the Contract. Contractor warrants the redesigned, repaired or replaced work for a period of one (1) year from the date of Final Acceptance of the Work. All costs incidental to redesign, repair or replacement, and testing, including the removal, replacement, and reinstallation of equipment necessary to gain access and all other costs incurred as a result of a breach of warranty shall be borne by Contractor and Contractor's surety.
- C. If Contractor, within 10 days after receiving Trinity Metro's written notice of a breach of warranty, fails to proceed to comply with the terms of this Section in a timely manner, Trinity Metro may have the defects corrected, and Contractor shall be liable for all costs incurred, provided that in case of an emergency where, in the opinion of Trinity Metro delay would cause serious safety risks, loss or damage, repairs may be made without notice to Contractor, and Contractor shall immediately pay the cost of the repairs.
- D. During the warranty period, Contractor shall be liable for all damage or disturbance to property and other improvements under, above, within, or adjacent to the Work, caused in whole or in part by activities of Contractor in performing its duties and obligations under the Contract.
- E. With respect to all warranties, express or implied, from Subcontractors, manufacturers, or Suppliers for work performed and Materials furnished under the Contract, Contractor shall:
  - 1. Obtain all warranties that would be given in normal commercial practices;
  - 2. Require all warranties to be executed in writing, for the benefit of Trinity Metro;
  - 3. Register all manufacturer and Supplier warranties in Trinity Metro's name; and
  - 4. Enforce all warranties for the benefit of Trinity Metro.

- F. Any warranty from a Subcontractor, manufacturer or Supplier to Contractor exceeding any period required by the Contract shall be extended to Trinity Metro for the same period of time as given to Contractor.
- G. The above warranties are not intended as a limitation but are in addition to all other express warranties set forth in the Contract and such other warranties either express or implied by law, custom or usage of trade.
- H. This warranty shall not limit Trinity Metro's rights under the Contract with respect to the latent defects, gross mistakes, or fraud.

**607 Uncovering and Correction of Work**

- A. If a portion of the Work is covered contrary to Trinity Metro's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by Trinity Metro, be uncovered for Trinity Metro's examination and be replaced at Contractor's expense without change in the contract time.
- B. If a portion of the Work has been covered that Trinity Metro has not specifically requested to examine prior to its being covered, Trinity Metro may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at Trinity Metro's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at Contractor's expense unless the condition was caused by Trinity Metro or an Other Contractor in which event Trinity Metro shall be responsible for payment of such costs.
- C. Contractor shall promptly correct Work rejected by Trinity Metro for failing to conform to the requirements of the Contract Documents and applicable law, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for Trinity Metro's services and expenses made necessary thereby, shall be at Contractor's expense.
- D. If, within one (1) year after the date of Final Acceptance of the Work or designated portion thereof or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall, at its own expense, correct it promptly, after receipt of written notice from Trinity Metro to do so, commence all required corrective work within forty-eight (48) hours (excluding



Saturdays and Sundays) for all critical items and within five (5) business days for all non-critical items and shall work diligently until all corrective work is completed, unless Trinity Metro has previously given Contractor a written waiver specifying such non-compliance. If Contractor fails to correct nonconforming Work within a reasonable time during such periods or if Contractor commences such corrective work but does not pursue it in an expeditious manner after receipt of notice, Trinity Metro may correct it, and charge the costs thereof to Contractor.

- E. The one (1) year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Final Completion and the actual completion of that portion of the Work. The one (1) year period for correction of Work shall not be extended by corrective Work performed by Contractor, so long as such correction is done in a good and workmanlike manner, and corrects the nonconformance.
- F. Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Trinity Metro. Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of Trinity Metro or Other Contractors caused by Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.
- G. Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one (1) year period for correction of Work as described in this Section relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.
- H. If during the guarantee or warranty period, any material, equipment or system requires corrective work because of defects in Materials or workmanship, Contractor shall commence all required corrective work within forty-eight (48) hours (excluding Saturdays and Sundays) after receiving the notice and work diligently until corrective work is completed. If Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective work within forty-eight (48) hours (excluding Saturdays and Sundays) or if Contractor commences such work but does not pursue it in a diligent and expeditious manner, Trinity Metro may either notify the bonding company (if any) to have such work and/or obligations performed at no additional cost to Trinity Metro or may perform such work and/or obligations and charge the costs

thereof to Contractor. Contractor shall correct any defects noted by Trinity Metro. The obligations of Contractor or any Subcontractor or Sub-subcontractor under the terms and provisions of the Contract Documents shall not be limited to the payments made by the surety (if any) under the provisions of the Contract.

#### **701 Payment**

- A. Invoices are to be submitted once a month by Contractor to Trinity Metro and shall conform to policies and regulations adopted from time to time by Trinity Metro. The invoices shall contain, at a minimum, the following information: (i) the contract number; (ii) documentation that the amounts invoiced agree with the progress claimed in the approved baseline schedule; (iii) the costs of the Work performed during this period, as referenced in the Job Cost Report, plus a percentage of Contractor's fixed fee proportional to the amount of Work completed within the payment period; (iv) Certified Payrolls; (v) a DBE payment report showing name of DBE firm, amount paid and DBE percentage utilization as of current payroll; and (vi) any other information necessary to demonstrate the entitlement to payment under the terms of the Contract. Failure to provide the above information may result in rejection and return of the invoice for resubmission with complete data.
- B. Contractor shall prepare a monthly Job Cost Report reflecting the cost of all work performed and Materials provided on the Project through the date of the current billing cycle. Such Job Cost Report shall contain the following information: costs of Materials, costs of labor and labor burden, costs of equipment, costs of Subcontractors, costs of fuel and other expendables, and other direct costs. The costs contained in the Job Cost Report shall be tracked in accordance with Generally Accepted Accounting Principles. The Job Cost Report shall be prepared in a form acceptable to Trinity Metro.
- C. Trinity Metro will pay to Contractor, at the times and in the manner hereinafter provided, the amount of the cost of the Work plus the agreed fixed fee, not to exceed the Contract Price for the Work satisfactorily performed, contingent upon Contractor's satisfactory compliance with the terms and conditions of the Contract. Contractor agrees to accept that amount as full and final payment for all labor, Materials, supplies, equipment, overhead, profit, taxes, duties, and charges of whatever nature incurred by Contractor in performing its obligations under the Contract.
- D. Trinity Metro will pay the approved invoice, less retainage within 30 days after its receipt by Trinity Metro. All retainage will be held by Trinity Metro until the time for final payment and Trinity Metro has received Consent of Surety. Trinity Metro retains the right and has the discretion to reduce the retainage withheld and change the period within which it is held.

- E. Concurrently with the submission of each request for a progress payment under the Contract, Contractor shall certify that all due and payable bills with respect to the Work either have been paid or will be paid with the proceeds of its current request for payment.
- F. Contractor agrees to pay each Subcontractor for satisfactory performance of its subcontract no later than seven (7) calendar days from receipt of each payment Contractor receives from Trinity Metro.
- G. All Materials and work covered by progress payments shall, at the time of payment, become the sole property of Trinity Metro, but this shall not be construed as relieving Contractor from the sole responsibility for all Materials and work upon which payments have been made or for the restoration of any damaged work, Materials, or waiving the right of Trinity Metro to require fulfillment of all terms of the Contract.

**702 Retainage**

The retainage percentage for this contract will be 5%.

**703 Withholding of Payments by Trinity Metro**

Trinity Metro may withhold all or part of a payment to the extent deemed necessary to protect Trinity Metro from loss because of:

- A. Defective work or work not performed in accordance with the Contract which is not remedied;
- B. Third party claims filed, or evidence reasonably indicating that a third party claim will be filed;
- C. If, after completion of the Work, the U.S. Government receives written notice from the surety regarding Contractor's failure to meet its obligation to its Subcontractors;
- D. Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Price;
- E. Damage to Trinity Metro or another contractor arising out of, caused by, or resulting from, the performance of or failure to perform the Work hereunder by Contractor;
- F. Contractor's failure to carry out the Work in accordance with the Contract;

- G. Contractor's failure to comply with any material provision or requirement of the Contract;
- H. Contractor's failure to pay the deductible portion of any insured claim filed by third-parties against Contractor;
- I. Contractor's failure to provide the required progress schedules and record drawings in accordance with the Contract;
- J. Any sums expended by Trinity Metro in performing any of Contractor's work under the Contract which Contractor has failed to perform; and
- K. Liquidated damages.

**704 Liens Prohibited**

Contractor shall not permit any lien or claim to be filed or prosecuted against Trinity Metro, its property, or its right-of-way on account of any labor or material furnished or any other reason for work arising out of the Contract. If any lien shall be filed, Contractor shall satisfy and discharge or cause such lien to be satisfied and discharged immediately.

**705 Taxes**

The Project to be constructed pursuant to the Contract is for new construction as defined in Texas Comptroller Rule 3.291, and the Contract shall be a separated contract for purposes of Texas Comptroller Rule 3.291. Contractor shall itemize separate charges for labor and Materials to Trinity Metro not to exceed the Purchase Price under the Contract. Contractor shall purchase all Performance Items (as defined at the end of this Section) free of Texas sales and use tax, for resale, under its valid Texas sales tax permit, and it shall not pass, and Trinity Metro shall not be responsible for, any sales or use tax cost or expense as part of the Purchase Price, Contractor's overhead and profit, or otherwise. Trinity Metro shall provide a Texas exemption certificate to Contractor, and Contractor shall not charge Texas sales tax to Trinity Metro on any of the Performance Items. In similar fashion, Contractor shall require its Subcontractors to enter into separated subcontracts under Texas Comptroller Rule 3.291 and contractually require the Subcontractors to purchase all Performance Items tax-free for resale. Such Subcontractors shall not pass on any sales or use tax cost or expense to Contractor or Trinity Metro. As used in this Section the term "Performance Items" shall mean tangible personal property that is incorporated into the realty; consumable items that are necessary and essential to the Contract and are completely consumed at the job site; and taxable services that are performed at the job site, and: (i) are expressly required by the Contract to be provided or purchased by Contractor; or (ii) are integral to the performance of the Contract. Contractor shall pay and bear the full economic responsibility for any applicable federal or state taxes imposed on its operations or performance under the Contract.

**706 Certified Current Cost or Pricing Data**

- A. Contractor and all affected Subcontractors will submit, in addition to the other information required to be submitted under, Changes in the Work, a certificate of current cost or pricing data if the aggregate increases and/or decreases in costs, plus applicable profits, of any modifications to the Contract exceeds \$500,000 or before awarding any subcontract expected to exceed \$500,000, except if the price is:
1. Based on unit prices or lump sum prices established in the Contract;
  2. Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
  3. Set by law or regulation.
- B. The certificate(s) will be submitted as soon as possible after agreement is reached on the Contract price adjustment. The certificate will be in the following form:

**CERTIFICATE OF CURRENT COST OR PRICING DATA**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to TRINITY METRO or to TRINITY METRO's representative in support of \* are accurate, complete, and current as of \* \*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing date agreements between the Proposer and TRINITY METRO that are part of the Proposal.

Firm  
Name  
Title  
Date of execution\*\*\*

\* Identify the Proposal, quotation, change order, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., C.O. No.).

\*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

\*\*\* Insert the day, month, and year of signing, which should be as close as practical to the date when the price negotiations were concluded and the contract price was agreed to.

- C. Although the certificate pertains to "cost or pricing data," it is not to be construed as a representation as to the accuracy of Contractor's judgment on the estimated portion of future costs or projection. It does, however, constitute a

representation as to the accuracy of the data upon which Contractor's judgment is based. A Certificate of Current Cost or Pricing Data will not substitute for examination and analysis of Contractor's Proposal.

- D. The exercise of an option at the price established in the initial negotiation in which certified cost or pricing was used does not require rectification or further submission of data.
- E. If the value of a Subcontractor's portion of the change order is less than \$100,000, the Subcontractor will not be required to submit a certificate.

**707 Price Reduction for Defective Cost or Pricing Data**

- A. If any price, including profit, negotiated in connection with any modification of the Contract to which Certified Current Cost or Pricing Data applies was increased by a significant amount because Contractor or Subcontractor or proposed Subcontractor furnished cost or pricing data that was not complete, the price will be reduced accordingly and the Contract will be modified to reflect the reduction.
- B. Any reduction in the Contract price under Paragraph A above due to defective data from a prospective Subcontractor that was not subsequently awarded the subcontract will be limited to the amount, plus an applicable overhead and profit markup, of the:
  - 1. The actual subcontract; or
  - 2. The actual cost to Contractor, if there was no subcontract; was less than the prospective subcontract cost estimate submitted by Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- C. If TRINITY METRO determines that a price or cost reduction should be made, Contractor agrees not to raise the following matters as a defense:
  - 1. Contractor or Subcontractor was a sole source Supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;
  - 2. Trinity Metro should have known that the cost or pricing data in issue were defective even though Contractor or Subcontractor took no affirmative action to bring the character of the data to the attention of Trinity Metro;
  - 3. The Contract was based on the agreement about the total cost of the

Contract and there was no agreement about the cost of each item procured under the Contract; or

4. Contractor or Subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- D. An offset in an amount determined appropriate by Trinity Metro based upon the facts will be allowed against the amount of a Contract price reduction if:
1. Contractor certifies that, to the best of Contractor's knowledge and belief, Contractor is entitled to the offset in the amount requested; and
  2. Contractor proves that the cost or pricing data were available before the date of agreement on the price of the Contract (or price of the modification) and that the data were not submitted before such date.
- E. An offset will not be allowed if:
1. The understated data was known by Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
  2. Trinity Metro proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- F. If any reduction in the Contract price under this Section reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, Contractor will be liable to Trinity Metro for such overpayment. Contractor will pay Trinity Metro at the time such overpayment is repaid simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to Contractor to the date Trinity Metro is repaid by Contractor at the rate established by the Treasury under 60 U.S.L. App. 121 5 (b)(2).

#### **801 Substantial Completion**

- A. When Contractor considers the Work to be Substantially Completed, Contractor will notify Trinity Metro in writing that it believes it has achieved Substantial Completion with respect to all or, if permitted by the Special Provisions, specified parts of the Work. Upon receipt of Contractor's notice of Substantial Completion, Trinity Metro will inspect the Work and determine whether Substantial Completion has been achieved. Within thirty (30) days after receiving Contractor's Substantial Completion, Trinity Metro will provide notice as to whether Substantial Completion has been achieved. If Substantial Completion has been achieved as to such Work, Trinity Metro will either accept the Work, in writing, as Substantially Complete or notify Contractor, in writing, of Work yet to

be performed under the Contract to achieve Substantial Completion. In any event, Trinity Metro will prepare and deliver to Contractor a written list of punchlist items to be completed or corrected.

- B. When Contractor has completed all Work, corrected any deficiencies in the Work and any Work rejected by Trinity Metro and has submitted all required Project records, documentation and reports, Contractor shall notify Trinity Metro in writing that Contractor considers the Work to have reached Final Completion and ready for final inspection for Final Acceptance.

**802 Final Completion, Final Acceptance and Final Payment**

- A. Following Trinity Metro's written statement of Substantial Completion, Contractor will send written notice to Trinity Metro informing Trinity Metro of the point in time at which Contractor has achieved Final Completion. Trinity Metro will then review the Work to determine whether Final Completion has been achieved and whether Final Acceptance is appropriate. Upon receipt of Trinity Metro's written Final Acceptance of the Work, Contractor will invoice Trinity Metro for any amounts due under the Contract including retainage.
- B. Neither the final payment nor any remaining retained percentage will become due until Contractor submits to Trinity Metro:
  - 1. An affidavit that all payrolls, bills for Materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied,
  - 2. Consent of Surety to final payment,
  - 3. As-built drawings and warranty information, and
  - 4. If required by Trinity Metro, other data establishing payment or satisfaction of all obligations, such as receipts, releases, and waivers of liens arising out of the Contract, to the extent and in the form designated by Trinity Metro.
- C. If the remaining balance of Work is less than the retainage stipulated in the Contract, and if bonds have been furnished as provided in the Contract, the written consent of the surety to the payment of the balance due for that portion of the Work eligible for Final Completion will be submitted by Contractor prior to payment.
- D. Acceptance of final payment by Contractor, a Subcontractor, or a material Supplier will constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of



application for final payment. Such waivers will be in addition to the waiver provided in this Section.

**803 Time of Completion**

Time is of the essence in the performance of the Contract. Contractor shall proceed with performance of the Work under the Contract upon the effective date of the Notice to Proceed, and shall continuously and diligently prosecute the Work and specified portions thereof to completion on or before the time or times set forth in the Contract. Contractor shall not commence work until it receives the Notice to Proceed, except as otherwise required by the Contract which includes an allowance for the normal number of days in which Contract Work may be partially or totally delayed because of weather during the season and at the location the Contract will be performed, and that Contractor will not be entitled to excusable delays or compensation for such delays.

**804 Project Schedule, Delays and Extensions of Time**

- A. The Scope of Work, attached to the Special Provisions, defines the requirements for the Project Construction Schedule and its updates, which are contract deliverables. The Construction Schedule shall be cost and resource loaded as specified.
- B. Contractor shall be granted an extension of time for any delay on the critical path to completion of the Work, based on the latest approved Contract Schedule, arising from acts of God, acts of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, earthquake, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or wrongful acts of owners or occupants of property adjoining the Work Site, provided that:
  - 1. The aforesaid causes were not foreseeable and did not result from the fault or negligence of Contractor and otherwise mitigate the impact of such events;
  - 2. That Contractor has taken reasonable precautions to prevent further delays owing to such causes; and
  - 3. Contractor has notified Trinity Metro in writing of the cause or causes of delay within 24 hours from the beginning of any such delay. Such delay shall not be the basis for a claim for additional compensation. For the purposes of this Section, weather conditions shall not be deemed unusually severe if they fall within two standard deviations from the mean of data for the period of delay recorded by the National Oceanographic and Atmospheric Administration (NOAA) for the Dallas/Fort Worth metropolitan area over the past 10 years.

- C. Upon receipt of Notice to Proceed and continuing through Final Completion of the Work, Contractor shall record and submit a report to Contractor on a daily basis substantiating when it considers itself to have suffered any actual lost day due to weather conditions or other excusable delay whether the actual lost days result in a time extension or not. Contractor's submission of such daily report for each time it claims a weather related delay on the day after any alleged weather delay will be a condition precedent to Contractor being able to claim that day as actual lost time. Contractor shall also submit to Trinity Metro, on a monthly basis, an account of actual days lost due to weather conditions for that month and a running total for the Contract performance period, together with its schedule assumptions regarding weather. Contractor and Trinity Metro shall attempt to agree on a monthly basis on the number of actual days lost for that month.
- D. Notwithstanding any other provisions of the Contract, the time extensions for changes in the Work will depend upon the extent, if any, by which the changes cause delay in the completion of the various critical path elements of construction. The Contract modification granting the time extension may provide that the Contract completion date will be extended only for those specific critical path elements so delayed and that the remaining Contract completion dates for all other portions of the Work will not be altered.
- E. If Contractor is delayed in the progress of the Work by an act, omission, or neglect of Trinity Metro, its agents or representatives, or an act or omission of another contractor of Trinity Metro other than Contractor and its Subcontractors and Suppliers of any tier in the performance of a contract with Trinity Metro, Contractor shall, within 24 hours after the commencement of such delay, file with Trinity Metro a written notice of delay together with a request for an extension of the Contract period for the portion of the Work so delayed. The notice shall set forth in detail the reasons for the delay, and the period for which an extension is requested. Contractor may submit a revised request for an extension of time within 14 working days following the cessation of such delay.
- F. When such a request is received, Trinity Metro will ascertain the reasons for and extent of such delay. If Trinity Metro determines that the cause was beyond the control and without the fault or negligence of Contractor and the facts justify an extension of time, or additional compensation, or both, the Contract will be modified accordingly, in writing, by a Change Order. The findings of Trinity Metro shall be conclusive and binding upon the parties. Should Contractor wish to contest such findings, it is permitted to do so pursuant to the procedures contained within the Contract.
- G. Unless the above notice and appropriate requests are filed with Trinity Metro pursuant to this Section within 24 hours after commencement of the delay, or such other times as may be prescribed herein, no extension of time will be made

or additional compensation allowed. The written notices in this Section are condition precedents to obtaining time extensions or additional compensation, or both, sought pursuant to this Section. In the case of a continuing cause of delay, only one request is necessary.

- H. If Trinity Metro determines that the facts do not justify an extension of time or additional compensation, such request will be denied. Trinity Metro’s findings of fact for either determination will be delivered to Contractor in writing. Contractor agrees that any extension of time and/or additional compensation granted under this Section should be its sole and exclusive remedy for the consequences of any delay described above.
- I. Unusually severe weather delays shall apply only if they affect particular portions of the Work and operations of Contractor, as determined by Trinity Metro. The effects of weather less severe than the norm based on the criteria stated in Paragraph A, may be taken into account in granting time extensions.
- J. Contractor shall consider and include seasonal weather conditions in the planning and scheduling of all Work, specifically including all Work influenced by high and low ambient temperatures, precipitation, and/or saturated soil, to ensure completion of all Work within the Contract time. Contract time extensions for abnormal weather will be granted only to the extent that the actual days lost during the Contract performance period exceeds the annual cumulative average lost days for the Contract performance period as determined by the average lost days listed below, which Contractor represents have been included in its schedule, included in its Bid, and in the Contract Price. The values listed below are based on the average historical seasonal weather or climate conditions for the preceding ten (10) years in the area as prepared by the NOAA, but in any event, the values listed below shall control the Contract. Average lost days for any month that is only partially included in the Contract performance period will be calculated by pro-rating the average lost days for that month shown below by the ratio of the number of days in the Contract performance period to the total number of days in the month. Contractor further acknowledges that time is of the essence and will attempt to avoid weather related delays.

Average Lost Time per Month (calendar days)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
8	6	6	6	6	4	4	4	4	4	5	6

- K. Actual lost days due to weather conditions occur only when weather conditions prevent Contractor from performing Work items critical to the timely completion of the Project for more than 50% of a scheduled workday. Items critical to timely completion are those on the critical path in the approved baseline schedule (or approved revised baseline schedule as appropriate). If Contractor does not have an approved baseline schedule at the time a weather condition occurs,

Contractor may not be entitled to include the days lost due to that weather condition in the calculation of actual days lost for the Project. Contractor's sole remedy for lost days due to weather conditions shall be an extension of time. Time extensions grant for weather conditions are not compensable and do not entitle Contractor to damages or an equitable adjustment

- L. An extension of time will not be granted for a delay caused by a shortage of labor or Materials, except Trinity Metro-furnished Materials, unless Contractor furnishes to Trinity Metro documented proof that it has made every effort to obtain such Materials from every known source within reasonable reach of the Work. There shall be no increase in compensation due Contractor for any increase in the cost of labor or Material.

Contractor shall also submit proof, in the form of network analysis data, that the inability to obtain such Material when originally planned, did in fact cause a delay in completion of any Contract milestone which could not be compensated for by revising the sequence of operations. Only the physical shortage of Material will be considered under these provisions as a cause for extension of time.

No consideration will be given to any claim that Material could not be obtained at a reasonable, practical, or economical cost unless it is shown to the satisfaction of Trinity Metro that such Material could have been obtained only at exorbitant prices, entirely inconsistent with current rates, taking into account the quantities involved and the usual practices in obtaining such quantities that such fact could not have been known or anticipated at the time the Contract was entered into.

- M. No extension of time will be granted under this Section for any delay to the extent:
1. That performance would have been delayed by any Contractor-induced causes, including, but not limited to, the fault or negligence of Contractor or its Subcontractors; or
  2. For which remedies are provided or excluded by any other provision of the Contract. Only the actual delay necessarily resulting from the causes specified in this Section shall be grounds for extension of time. In case Contractor is delayed at any time or for any period by two or more of the causes specified in this Section, Contractor shall not be entitled to a separate extension for each one of the causes only one period of extension will be granted for the delay.
- N. An extension of time granted shall not release Contractor's surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and said Contract shall be and shall remain in full force and effect during the continuance and until the Final Completion and Final

Acceptance of the Work covered by the Contract unless terminated in accordance with the terms of the Contract. Permitting Contractor to finish the Work or any part thereof after the time fixed for completion or after the date to which the time for completion may have been extended or the making of payments to Contractor after any such periods shall not constitute a waiver on the part of Trinity Metro or any rights under the Contract.

- O. Neither the granting of an extension of time beyond the date fixed for the completion of any part of the Work, nor the performance and acceptance of any part of the Work or Materials specified by the Contract after the time specified for the completion of the Work, shall be deemed to be a waiver by Trinity Metro of Trinity Metro's right to abrogate the Contract for abandonment or failure to complete within the time specified or to impose and deduct damages as may be provided.

**805 Not used**

**806 No Damages for Delays**

Unless otherwise specifically provided for by the Contract, Contractor shall not be entitled to damages of any type resulting from hindrances, delays, or any other cause under the Contract except when the Work is stopped or suspended by a written order by Trinity Metro or by intentional interference by Trinity Metro which is not permitted under the Contract.

**807 Use of Completed Portions of the Work**

- A. Whenever, as determined by Trinity Metro, any portion of the Work performed by Contractor is in a condition suitable for use, and the best interests of Trinity Metro requires such use Trinity Metro may take possession of or use such portion of the Work. Such use by Trinity Metro shall in no case be construed as Final Acceptance, and shall neither relieve Contractor of any of its responsibilities under the Contract, nor act as a waiver by Trinity Metro of any of the conditions thereof. Contractor shall not be liable for the cost of repairs, rework, or renewals, which may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of the Work, Contractor shall notify Trinity Metro in writing as required by the Contract and shall be entitled to such additional compensation or extension of time, or both, as determined in accordance with the Contract.
- B. If in the course of such use, the Work proves to not be in compliance with the Contract, Trinity Metro shall have the right to continue such use until such portion of the Work can, without injury to Trinity Metro, be taken out of service for

correction of defects, errors, omissions, or replacement of unsatisfactory Materials, as necessary for such portions of the Work to comply with the Contract. Contractor shall correct the Work as soon as practical, but not later than one (1) month after notification by Trinity Metro.

- C. Contractor shall not use any permanently incorporated Materials unless such use is approved in writing by Trinity Metro. Where Contractor's request is granted for the use of certain Materials, Contractor shall properly use and maintain and, upon completion of its use and at its own expense, recondition such Materials to the satisfaction of Trinity Metro.

**808 Suspension of Work**

- A. Trinity Metro may order Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work of the Contract for a period of time that Trinity Metro determines appropriate for its own convenience.
- B. If the performance of all or part of the Work is suspended, delayed, or interrupted for an unreasonable period of time:
  - (1) by an act of Trinity Metro in the administration of the Contract, if not attributable to action, inaction's, or defaults of the Contract or its Subcontractors or Suppliers of any tier; or
  - (2) by Trinity Metro's failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), then an adjustment will be made for any increase in the time of performance of the Contract necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified.

However, no adjustment shall be made under this Section for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of the Contract.

- C. In preparation for and during suspensions of Work, Contractor shall take every reasonable precaution to prevent damage to or deterioration of the Work. Contractor shall repair or replace at no cost to Trinity Metro work that is damaged or deteriorated during a work suspension due to Contractor's failure to comply with this Section. If Trinity Metro finds that Contractor is not taking a reasonable precaution and Contractor fails to take the precaution within 48 hours after written notice from Trinity Metro, Trinity Metro may cause the precaution to be taken and recover the reasonable costs of taking the precaution from Contractor.

**809** **Termination for Convenience**

- A. Whenever the interests of Trinity Metro may so require, Trinity Metro may terminate performance of work under the Contract in whole, or from time to time, in part for Trinity Metro's convenience. Trinity Metro shall exercise its right to terminate for convenience by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination under this Section, and except as required by Trinity Metro, Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting any amounts due under this clause:
1. Stop work as specified in the notice;
  2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for Materials, services, or facilities, except as necessary to finally complete the continued portion of the Contract;
  3. Terminate all subcontracts or orders to the extent they relate to the work terminated;
  4. Assign to Trinity Metro, as directed by Trinity Metro, all right, title and interest of Contractor under the subcontracts terminated, in which case Trinity Metro shall have the right to settle or to pay any termination settlements arising out of those terminations;
  5. With approval or ratification to the extent required by Trinity Metro, settle all outstanding liabilities and termination settlement Proposals arising from the termination of subcontract, and the approval or ratification will be final for purposes of this clause;
  6. Transfer title and deliver to Trinity Metro the following items:
    - a. The fabricated or un-fabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated, and
    - b. The completed or partially completed plans, drawings, information and other property that, if the Contract had been finally completed, would be required to be furnished to Trinity Metro;
  7. Complete performance of the Work not terminated;

8. Take any action that may be necessary, or that Trinity Metro may direct, for the protection and preservation of the property related to the Contract that is in possession of Contractor and in which Trinity Metro has or may acquire an interest; and
9. Use its best efforts to sell, as directed or authorized by Trinity Metro, any property of the types referred to in subparagraph 6 above; provided, however, that Contractor:
  - a. Is not required to extend credit to any purchaser, and
  - b. May acquire the property under the conditions prescribed by, and at prices approved by Trinity Metro.
- C. After reasonable effort to comply with subparagraph B.9., Contractor may submit to Trinity Metro a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Trinity Metro. Contractor may request Trinity Metro to remove those items or enter into an agreement for their storage. Within 15 days, Trinity Metro will accept title to those items and remove them or enter into a storage agreement. Trinity Metro may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- D. After termination, Contractor shall submit a final termination settlement Proposal to Trinity Metro in the form and with the certification prescribed by Trinity Metro. Contractor shall submit the Proposal promptly, but no later than one (1) year from the effective date of termination, unless extended in writing by Trinity Metro upon written request of Contractor within this one (1) year period. However, if Trinity Metro determines that the facts justify it, a termination settlement Proposal may be received and acted on after 1 year or any extension. If Contractor fails to submit the Proposal within the time allowed, Trinity Metro may determine, on the basis of information available, the amount, if any, due Contractor because of the termination and shall pay the amount determined.
- E. Subject to Paragraph D. above, Contractor and Trinity Metro may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on Work done. However, the agreed amount, whether under this Paragraph E. or Paragraph F. below, exclusive of costs shown in Subparagraph F.2 below, may not exceed the total Contract price as reduced by:
  1. The amount of payments previously made, and
  2. The Contract price of work not terminated. The Contract shall be



amended, and Contractor paid the agreed amount. Paragraph F. below shall not limit, restrict, or affect the amount that may be agreed to be paid under this paragraph.

- F. If Contractor and Trinity Metro fail to agree on the whole amount of costs to be paid because of the termination of work, Trinity Metro shall determine, on the basis of information available, the amount, if any, due Contractor, and shall pay the amount determined as follows:
1. All costs reimbursable under the Contract, not previously paid, for the performance of the Contract before the effective date of the termination, and part of those that may continue for a reasonable time with the approval of or as directed by Trinity Metro, however, Contractor shall discontinue those costs as rapidly as practicable.
  2. The costs of settling and paying termination settlement Proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract, if not included in subparagraph (1) above.
  3. The reasonable costs of settlement of the Work terminated, including the following costs:
    - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement Proposals and supporting data;
    - b. The termination and settlement of subcontracts; and
    - c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- G. The costs principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of the Contract, shall govern all costs claimed, agreed to, or determined under this Section.
- H. Contractor shall have the right of appeal, under the Claims clause, from any determination made by Trinity Metro under Paragraph D., F., or K., except that if Contractor failed to submit the termination settlement Proposal within the time provided in Paragraph D. or K., and failed to request a time extension, there is no right of appeal. Such termination settlement Proposal is a condition precedent to recovery under this Section. If Trinity Metro has made a determination of the amount due under Paragraph D., F., or K., Trinity Metro shall pay Contractor:
1. The amount determined by Trinity Metro if there is no right of appeal or

if no timely appeal has been taken, or

2. The amount finally determined on an appeal.
- I. In arriving at the amount due Contractor under this clause, there shall be deducted:
    1. All unliquidated advance or other payments to Contractor under the terminated portion of the Contract;
    2. Any claim which Trinity Metro has against Contractor under the Contract; and
    3. The agreed price for, or the proceeds of sale of, Materials, supplies, or other things acquired by Contractor or sold under the provisions of this clause and not recovered by or credited to Trinity Metro.
  - J. If the termination is partial, Contractor may file a Proposal with Trinity Metro for an equitable adjustment of the price(s) of the continued portion of the Contract. Trinity Metro shall make any equitable adjustment agreed upon. Any Proposal by Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by Trinity Metro.
  - K. Trinity Metro may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Contractor for the terminated portion of the Contract, if Trinity Metro believes the total of these payments will not exceed the amount to which Contractor will be entitled.
  - L. If the total payments exceed the amount finally determined to be due, Contractor shall repay the excess to Trinity Metro upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in Contractor's termination settlement Proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by Trinity Metro because of the circumstances.
  - M. Unless otherwise provided in the Contract or by statute, Contractor shall maintain all records and documents relating to the terminated portion of the Contract for three (3) years after final settlement. This includes all books and other evidence bearing on Contractor's costs and expenses under the Contract. Contractor shall make these records and documents available to Trinity Metro, at Contractor's

office, at all reasonable times, without any direct charge. If approved by Trinity Metro, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**810 Termination for Default**

- A. Trinity Metro may terminate the Contractor for default if Contractor:
1. Refuses or fails to commence the Work within the time required under the Contract;
  2. Refuses or fails to prosecute the Work or any separable part, with the diligence that will ensure its completion within the time specified in the Contract including any extension;
  3. Refuses or fails to provide sufficient and properly skilled workmen or proper Materials or equipment to complete the Work in an acceptable manner and without delay;
  4. Refuses or fails to resume performance of the Work within a reasonable time after notice to do so following evidence of Contractor's abandonment of the Work or discontinuance of the performance of the Work;
  5. Refuses or fails to perform any of its obligations under the Contract;
  6. Refuses or fails to promptly pay its Subcontractors, laborers, and materialmen;
  7. Refuses or fails to correct any design defect or error;
  8. Refuses or fails to comply with the safety procedures on the Project in the manner addressed in the Contract;
  9. Refuses or fails to complete the Work within the time specified in the Contract; or
  10. Enters into proceedings relating to bankruptcy, whether voluntary or involuntary; and Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Contract Administrator; and this notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing, and shall include the date on which the bankruptcy petition was filed, and the identity of the court in which the bankruptcy petition was filed;

(collectively, "Events of Default"); then Trinity Metro shall have the right, if Contractor shall not cure any such default after seven (7) days' written notice thereof, to (i) terminate the Contract, (ii) take possession of and use all or any part of Contractor's Materials used by Contractor in the performance of the Work, and/or (iii) complete the Work in any manner Trinity Metro deems desirable, including engaging the services of other parties therefor. Any such act by Trinity Metro shall not be deemed a waiver of any other right or remedy of Trinity Metro or a breach of the Contract. Contractor and its sureties shall be liable for any damage to Trinity Metro resulting from Contractor's refusal or failure to complete the Work within the specified time, whether or not Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by Trinity Metro in completing the Work.

- B. If, after termination of Contractor's right to proceed, it is determined that Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been under "Termination for Convenience."
- C. The rights and remedies of Trinity Metro in this clause are in addition to any other rights and remedies provided by law or under the Contract.
- D. If Trinity Metro has not made payment on an invoice submitted by Contractor within thirty (30) days after its receipt, unless such failure to make payment is the result of Contractor's actions or inactions, Contractor shall give Trinity Metro written notice of such failure. Should Trinity Metro fail to pay such invoice for reasons other than those allowed under the Contract, within thirty (30) days of receipt of such written notice, Contractor may terminate the Contract and recover from Trinity Metro payment for Work executed, prior to termination. Trinity Metro shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination.
- E. Contractor shall not suspend the Work or take any action related to a default by Trinity Metro without first notifying, in writing, Trinity Metro of its default, the nature thereof, and allowing Trinity Metro thirty (30) days to cure such default, except as to any default for which the law requires a shorter time period.
- G. Contractor and Trinity Metro agree that if Contractor reaches Substantial Completion of the Project, then they cannot terminate the Contract pursuant to the terms of this Section.
- H. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Trinity Metro.
- I. Opportunity to Cure

The Trinity Metro in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 – 60 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to the Trinity Metro's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from The Trinity Metro setting forth the nature of said breach or default, the Trinity Metro shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Trinity Metro from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- J. Waiver of Remedies for any Breach in the event that the Trinity Metro elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the Trinity Metro shall not limit the Trinity Metro's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

#### **811** Claims

- A. It is an express condition precedent of Contractor's right to make a claim or to receive any recovery or relief under or in connection with the Contract to strictly comply with the provisions of this Section. In order to assert a claim for damages, additional compensation, additional time, or other reasons, Contractor must submit a written Notice of Intent of Claim to Trinity Metro in accordance with the provisions of this Section. Every claim, whether for damages, additional compensation, additional time, or other reasons shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Contractor by his or her signature) of Contractor, verifying the truth and accuracy of the claim. Such verification shall be a condition precedent to the acceptability of any claim asserted by Contractor. Failure to strictly comply with the provisions in this Section shall constitute a waiver by Contractor of any right, equitable or otherwise, to bring any such claim against Trinity Metro.
- B. If Contractor is of the opinion that (1) certain work necessary or required to accomplish the result intended by the Contract or certain work ordered to be done as contract work by Trinity Metro is actually Extra Work and such work is not within the Scope of Work; or (2) any determination, action, or order of Trinity Metro violates the terms and provisions of the Contract, then Contractor shall promptly, before proceeding with such work or complying with such order or determination, notify Trinity Metro in writing of its contentions with respect thereto and request a final determination by Trinity Metro concerning whether the work is Extra Work or Contract work or whether the order violates the Contract. Such determination by Trinity Metro shall be given in writing to

Contractor.

1. If Trinity Metro determines that the work in question is Extra Work and not Contract work, or that the order complained of requires performance by Contractor beyond that required by the Contract or violates the terms and provisions of the Contract, thereupon Trinity Metro shall cause either (a) the issuance of a written order covering the Extra Work as provided for in Section 501, or (b) the determination or order complained of to be rescinded or so modified so as not to require performance beyond that required by the terms and provisions of the Contract.
2. If Trinity Metro determines that the work in question is Contract work and not Extra Work, or that the determination or order complained of does not require performance by Contractor beyond that required by the Contract or violates the terms and provisions of the Contract, Trinity Metro shall direct Contractor to proceed, and Contractor must promptly comply. In order to reserve its right to claim compensation for such work resulting for such compliance, however, Contractor must, within fourteen (14) days of receiving Trinity Metro's determination and direction, notify Trinity Metro in writing that the work is being performed, or that the determination and direction is being complied with, under protest.
3. If the Contractor fails to appeal to Trinity Metro under this Section for a determination or, having so appealed, should Contractor thus fail to notify Trinity Metro in writing of its protest, Contractor shall be deemed to have waived any claim for extra compensation or alleged damages. No oral appeals or oral protests, no matter to whom made, shall be deemed substantial compliance with the provisions of this item.
4. In addition to the foregoing requirements and conditions, Contractor shall, upon notice from Trinity Metro, produce for examination and audit at Contractor's office, by representatives of Trinity Metro, all its books and records showing all of its acts and transactions in connection with the contractual performance as well as relating to or arising by reason of the matter in dispute and any Extra Work related claims.
5. Unless the aforesaid requirements and conditions shall have been complied with by Contractor, Trinity Metro shall be released from all claims arising under, relating to, or by reason of the Contract, except for the sums to be due under the payment provisions of the Contract. **IT IS FURTHER STIPULATED AND AGREED THAT NO CONDUCT ON THE PART OF TRINITY METRO OR ANY AGENT OR EMPLOYEE OF TRINITY METRO SHALL EVER BE CONSTRUED AS A WAIVER OF THE REQUIREMENTS OF THIS SECTION, WHEN SUCH REQUIREMENTS CONSTITUTE AN ABSOLUTE**

**CONDITION PRECEDENT TO ANY APPROVAL OF ANY CLAIM FOR EXTRA COMPENSATION, NOTWITHSTANDING ANY OTHER PROVISIONS OF THE CONTRACT DOCUMENTS; AND IN ANY ACTION AGAINST TRINITY METRO TO RECOVER ANY SUM IN EXCESS OF THE CONTRACT AMOUNT, CONTRACTOR MUST ALLEGE AND PROVE STRICT COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.**

6. While Contractor or any Subcontractor is performing Extra Work, is performing disputed work, or complying with a determination or order under protest, Contractor shall furnish, daily, to Trinity Metro with three copies of verified statements showing:
- a. The name and number of each worker, foreman, timekeeper, mechanic, or laborer employed on Extra Work or engaged in complying with such determination or order, the character of the Extra Work each is doing and the wages paid to him or her, including the rate and amount of payroll taxes, contribution of insurance and federal social security; and
  - b. The nature, cost, and quantity of any Materials, supplies, tools, plant or construction equipment furnished or used in connection with the performance of the Extra Work or in complying with such determination or order, and from whom purchased or rented.

The above-required submittals are in addition to and not in lieu of other submittals required under the Contract.

Failure of Contractor to comply strictly with these requirements, which are a condition precedent to recovery, shall constitute a waiver of any claim for extra compensation on account of the performance of such Extra Work.

- C. The written Notice of Intent of Claim shall set forth:
1. The reasons for which Contractor believes additional compensation will or may be due;
  2. The nature of the costs involved;
  3. Contractor's plan for mitigating such costs; and
  4. If ascertainable, the amount of the potential claim.
- D. The Notice of Intent of Claim must be given to Trinity Metro's representative

within ten (10) days after the occurrence of the event giving rise to the potential claim. If the event is claimed to be an act or omission by Trinity Metro, notice must be given prior to commencing the portion of the Work to which such alleged act or omission relates.

- E. The notice requirements of this Section are in addition to any other notice requirement set forth in the Contract and are an absolute condition precedent for approval of a Claim..
- F. As a further condition of precedent to approval of a claim, all claims shall be filed by Contractor within thirty (30) days of the event giving rise to the claim, in sufficient detail to ascertain the basis and amount of said claim. It is the responsibility of Contractor to furnish, when requested by Trinity Metro, such further information and details as may be requested. Contractor agrees to give Trinity Metro access to its books, records and other Materials relating to the Work, and will cause its Subcontractors to do the same, so that Trinity Metro can investigate such claim.
- G. Contractor's failure to submit any claim in writing within the relevant time and in the manner prescribed above shall waive any relief that might otherwise be due with respect to such claim.
- H. Each claim Contractor submits for adjustment on account of delay for any cause shall be accompanied by a revised Construction Schedule reflecting the effects of the delay and Proposals to minimize these effects. If no Construction Schedule has been submitted to Trinity Metro reflecting conditions prior to the delay for which relief is sought, then a Construction Schedule so reflecting these conditions shall be prepared and submitted with the claim.
- I. Trinity Metro shall be entitled to a reasonable time, after it receives each claim in writing and accompanied by supporting documents and evidence, in which to investigate, review, and evaluate such claim. When Trinity Metro has completed its investigation, review, and evaluation, it will advise Contractor in writing of the relief, if any, to which it is entitled. The decision of Trinity Metro shall be final and conclusive unless, on or before the 90<sup>th</sup> day from the receipt of Trinity Metro's decision, Contractor provides a written appeal of such decision to Trinity Metro. In the event of such an appeal, the claim shall become a Dispute and shall be resolved in accordance with the Contract's Dispute provisions. **Trinity Metro's timely receipt of a written appeal from Contractor is a condition precedent to Contractor's pursuit of any relief other than that provided in Trinity Metro's decision.**
- J. In no event shall Contractor claims be made after Final Payment is made.
- K. A claim will cease to be a claim if, at any time, a change order resolving the issue



is signed by all parties.

L. Trinity Metro claims against Contractor. Should Trinity Metro determine, based on its interpretation of the Contract that Contractor owes relief to Trinity Metro, then Trinity Metro shall provide Contractor with written notice of its decision in that regard and the relief owed. The decision of Trinity Metro shall be final and conclusive unless, on or before the 30<sup>th</sup> day from the receipt of Trinity Metro's decision, Contractor provides a written appeal of such decision to Trinity Metro. In the event of such an appeal, the claim shall become a Dispute and shall be resolved in accordance with the Contract's Dispute provisions. **Trinity Metro's timely receipt of a written appeal from Contractor is a condition precedent to Contractor's avoidance of all obligations of Contractor as provided in Trinity Metro's decision.** All amounts payable to Trinity Metro by Contractor as a result of a claim by Trinity Metro may, at Trinity Metro's discretion, be offset against and deducted from amounts otherwise payable to Contractor. If no amounts remain owed to Contractor, or if the remaining amount owed to Contractor is insufficient to satisfy Trinity Metro's claim, then Contractor shall, absent an appeal, pay the claim amount on or before the 30th day from its receipt of Trinity Metro's decision.

Trinity Metro may assert a claim against Contractor at any time, including after Final Payment, with or without prior notice of such claim or the event or events giving rise to same.

#### **812 Payment of Claims**

If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a Subcontractor by any person in connection with the Contract as the claim becomes due, Trinity Metro may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor pursuant to the Contract. Trinity Metro's payment of a claim under this Paragraph shall not relieve Contractor or Contractor's surety from responsibility for such claims.

#### **901 Audit and Inspection of Records**

A. Under the required "open book" accounting, Contractor shall keep full and detailed project records and exercise such controls as may be necessary for proper business and financial management under the Contract. Trinity Metro, Trinity Metro's accountants, attorneys or any local, state or federal governmental authority, or their duly authorized representatives shall be afforded access to Contractor's Project records and Contractor shall preserve the Project's records and shall make them available for inspection or copying for a period of three (3) years after Substantial Completion, or for such longer period as may be required by any applicable laws. All Project records related to financial matters will be maintained in accordance with generally accepted accounting principles and audit standards, consistently applied. There will be an "open book" policy in

effect at all times with regard to all Project records maintained by Contractor, or anyone on its behalf. Trinity Metro, Trinity Metro's accountants or any local, state or federal governmental authority, or their duly authorized representatives will have the right to audit the Project records of Contractor, Subcontractors, and Suppliers. If the audit results in a finding that an overcharge or error of any nature has occurred, Trinity Metro will adjust Contractor's application(s) for payment or seek reimbursement for payments already made.

B. Contractor further agrees to include in all of its subcontracts under the Contract a provision to the effect that the Subcontractor agrees that Trinity Metro, the U.S. Department of Transportation, the State of Texas and the Comptroller General of the United States, or any of their duly authorized representatives will, until the expiration of three years after final payment is made under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Subcontractor. The term "subcontract" as used in this Section excludes:

1. Purchase orders not exceeding \$10,000.00 and
2. Subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

C. The periods of access and examination described in paragraphs A. and B. of this Section will continue until all questions, disputes, claims, litigation, appeals, and exceptions have been resolved for records that relate to:

1. Disputes between Trinity Metro and Contractor, and any Subcontractor.
2. Litigation or settlement of any claims arising out of the performance of the Contract, or
3. Costs and expenses of the Contract.

## **902 Notices and Communications**

A. Prior to issuance of the NTP, any notice to Trinity Metro will be effective only if it is delivered to Trinity Metro's Procurement Department, 801 Grove Street, Fort Worth, Texas 76102. Following issuance of the NTP, all communications and notices shall be delivered to the address designated by Trinity Metro. All correspondence shall reference the Contract Number.

B. Prior to commencement of the Work, a notice to Contractor will be effective if it is delivered to the individual who signed the Contract on behalf of Contractor at the address shown with that signature, to a corporate officer if Contractor is a

corporation, to a general partner if Contractor is a partnership or to another individual designated by Contractor in the Contract or in a written notice to Trinity Metro.

**903 Paragraph Headings and Other Titles**

The parties agree that paragraph headings and other titles used in the Contract are for convenience only, and are not to be used to interpret the Contract.

**904 Assignment**

Contractor shall not assign the whole or any part of the Contract or any monies due or to become due hereunder without the prior written consent of Trinity Metro.

**905 Severability**

To the maximum extent possible, each portion, provision or part of the Contract will be interpreted in such a manner as to be effective and valid under all applicable law. If any portion, provision, or part of the Contract is or the application thereof to any person or circumstances found by a court of competent jurisdiction to be unenforceable, such portion, provision, or part shall be severed from the Contract and the validity and enforceability of the remaining portions, provisions, or parts shall remain unaffected. In the event any that any portion, provision, or part to the Contract is declared illegal, invalid or unenforceable, the parties agree to negotiate in good faith for a proper amendment to the Contract addressing the severed portion, provision, or part.

**906 Complete Agreement**

The Contract (including Attachments, the Special Provisions, the General Provisions, other documents and manuals incorporated herein) is the full and complete agreement between Trinity Metro and Contractor with respect to the subject matter herein and supersedes any and all prior agreements between the parties hereto.

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220. IF, and all future FTA Circular revisions are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Trinity Metro requests, which would cause Trinity Metro to be in violation of the FTA terms and conditions.

**907 Waiver**

The waiver or excuse by Trinity Metro of the breach of any provision of the Contract by Contractor shall in no way impair the right of Trinity Metro to enforce the provision for any subsequent breach thereof. All remedies provided hereunder are cumulative and are in addition to all other remedies available at law or in equity.

**908 Execution of the Contract**

The Contract may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of the Contract may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

**909 Publicity and Advertising**

Contractor, its Subcontractors, and Suppliers shall not publish nor cause to be published any advertisement or other material, including news releases and technical papers, regarding the Contract the subject matter of the Contract or the Project at any time without the prior written authorization of Trinity Metro. Contractor shall refrain from discussing this project with the media. Inquiries from the media shall be immediately referred to Trinity Metro. Contractor shall not display any signs, posters, or any other advertising matter in or on the Work or on or around the Work Site, other than those prescribed by the Contract or by law, without the prior written authorization of Trinity Metro. In addition, advertising or other copy mentioning Trinity Metro or quoting the opinions of any of its employees shall not be released before such copy is approved in writing by Trinity Metro before release. Any material proposed for publication by Contractor must be factual, and not state or imply endorsement by Trinity Metro or any firm, service, or product.

**SECTION 8 CONSTRUCTION SAFETY MANUAL****TABLE OF CONTENTS****Part I****Construction Safety Program**

- 1.1 Program Objective
- 1.2 Definitions
- 1.3 Construction Safety Responsibilities

**Part II****Construction Safety Requirements**

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**PART I****1.1 Program Objectives**

The Construction Safety Program has been established by the Trinity Metro (hereafter referred to as the Trinity Metro) to promote safety and to minimize and control hazards and risks associated with the construction, repair, and related services of the project. The specific Construction Safety Program goals are as follows:

- A. Minimize personal injuries and property damage.
- B. Achieve greater efficiency.
- C. Reduce direct and indirect costs.

The effectiveness of the Construction Safety Program will depend upon the active participation and cooperation of contractor, the contractor's employees and any subcontractors and their employees and the coordination of their efforts with the Trinity Metro in carrying out the following basic procedures.

- A. Plan all work to minimize the potential for personal injury, property damage, and loss of productive time
- B. Comply with federal, state and local laws, ordinances, and regulations; industry standards; and DOT regulations and requirements.
- C. Maintain a system of prompt detection and correction of unsafe practices and conditions.
- D. Establish and conduct an educational program to stimulate and maintain interest and cooperation of all employees through safety meetings and safety training programs, through the use of personal protective equipment and mechanical guards, and through prompt notification and investigation of all accidents or claims to determine the causes and to take necessary corrective action.

**1.2 Definitions**

- A. **Construction Safety Program**  
The safety and loss prevention program established by the Construction Safety Management Committee to identify the hazards and risks associated with construction projects.

- B. **Contract**  
The written agreement by and between the Trinity Metro and a Contractor.
- C. **Contractor**  
The term used to refer to all Contractors, Subcontractors, and sub-contractors of any tier.
- D. **Contractors Superintendent**  
The Contractors Superintendent is the person given the project or task who has the overall responsibility to see that the work or job is satisfactorily completed.
- E. **Insureds**  
The Trinity Metro, Consultants, Contractors, Architects, Engineers, Subcontractors, and any other party named as insured's on the Certificates of Insurance signed by a duly authorized representative of the Insurance Carriers.
- F. **Job Site**  
The area and easement as defined within the Contract or as directed by the Trinity Metro.
- G. **Occupational Safety and Health Agency (OSHA)**  
The federal government agency responsible for providing the rules and regulations on safety and health requirements in the work place.

### 1.3 Construction Safety Responsibilities

#### A. Trinity Metro Safety Representative

The Trinity Metro employee responsible for the day-to-day routine oversight of the Construction Safety Program for which the Trinity Metro has construction management or oversight management responsibilities.

1. Review all applicable contract documents for safety related problems.
2. Review Contractors safety plans and programs, descriptions of the hazards peculiar to their work.
3. Work diligently with Trinity Metro to ensure compliance with all safety provisions, including OSHA (29 C.F.R. parts 1910 and 1926) DOT (49 C.F.R part 40), and other laws, regulations and applicable standards as set forth in this Construction Safety manual and as otherwise required by plans and specifications and the Traffic Control Plan. .
4. Participate in meetings with Proposers and contractors (such as pre-bid,

pre-award and pre-construction conferences) to outline and explain the Construction Safety Program.

5. Monitor the construction management Safety-related staff actions on all safety related issues.
6. Assist Construction Management field personnel on safety matters. Act as a technical advisor for safety issues and perform necessary actions to assure that safety programs and procedures are implemented in the field.

B. Contractor

THE CONTRACTOR IS RESPONSIBLE FOR ACCIDENT PREVENTION AND JOB SITE SAFETY. This responsibility cannot be delegated to sub-contractors, suppliers, the Trinity Metro, or other persons.

In compliance with these provisions, the Contractor shall comply with the latest edition of this safety manual and perform the following:

1. Ensure that all of its subcontractors, suppliers, etc. are provided with a copy of this Construction Safety Manual and are informed of their obligations with regard to safety.
2. Plan and execute all work to comply with the stated objectives and safety requirements contained in the Trinity Metro's Construction Safety Manual: contract provisions; federal, state and local laws and regulations; and industry standards.
3. Within ten (10) calendar days of notification of the contract award, submit in writing a Contractors Safety Plan to the Trinity Metro, who will forward the documents to the PSM for review and recommendations. The Contractors Safety Plan must comply with Trinity Metro's Construction Safety Plan. Construction will not begin without an appropriate Safety Plan. Delay in submitting a written Contractors Safety Plan shall not constitute grounds for a contract schedule extension or delay claim.
4. Maintain an orientation program for new employees, which will include as a minimum a review of (a) hazards present in the area in which they will be working and (b) the personal protective equipment and apparel the workers will be required to use or wear as specified under OSHA.
5. Hold safety meetings on a weekly basis. Documentation of topics



discussed and attendees shall be maintained.

C. Contractor's Superintendent

This person will ensure compliance with all provisions of the contract, including the Trinity Metro's Construction Safety Manual, OSHA, and other agency and industry safety requirements and standards. Additional duties of the Superintendent shall include the following:

1. Review and direct immediate action to correct all substandard safety conditions brought to his/her attention.
2. Take an active part in all supervisory safety meetings, including the discussion of observed unsafe work practices or conditions, a review of the accident experience and corrective actions, and encouragement of safety suggestions from employees.
3. Cooperate with the Trinity Metro and Safety Representatives of the Insurance Administrators or the Insurers.
4. Provide the Trinity Metro with copies of all OSHA citations as soon as received.

D. Job Foremen

The Contractor's Job Foremen are an integral part of an effective safety program, and the amount of effort they put into accident prevention on their daily assignments determines whether or not a good accident record is established.

A Job Foreman's responsibilities shall include the following:

1. Instructing the personnel under his/her supervision in safe work practices and work methods at the time the employees are given work assignments.
2. Seeing that his/her employees have and use the proper protective equipment and suitable tools for the job.
3. Continuous monitoring to ensure that no unsafe practices or conditions are allowed to exist on the job sites.
4. Correcting or reporting immediately to the Subcontractors Manager any unsafe conditions, practices or violations of job security.

5. Performing a complete investigation of all accidents and taking corrective actions to prevent a recurrence.
6. Setting a good example for personnel.
7. Holding weekly "tool box" safety meetings with work crews to (a) discuss any observed unsafe work practices or conditions, (b) to review the accident experience of the crew and discuss corrective action to prevent future accidents, and (c) to encourage safety suggestions from the employees and report their recommendations to the Safety Manager or Superintendent.
8. Seeing that prompt first-aid is administered to an injured employee.

## **PART II**

### **2.1 General Safety Provisions**

- A. The Contractor shall protect the health and safety of employees, the public and other persons: prevent damage to property, materials, supplies, and equipment: and avoid interrupting the normal operation of the Railroads. To achieve these purposes, the Contractor shall perform the following:
  1. Comply with all federal, state and local safety laws and regulations and industry standards including, but not limited to, the application of OSHA Construction Safety and Health Regulations 29 CFR Part 1926 and 29 CFR Part 1910: and the Trinity Metro's Construction Safety Program regulations and orders: and shall require compliance with the foregoing by all Subcontractors and Suppliers at every tier.
  2. Establish a Fire Prevention Plan referencing OSHA and NFPA standards. Approved safety cans shall be used for flammable and combustible liquids. "NO SMOKING OR OPEN FLAME" signs and fire extinguishers shall be provided where required. The Contractors Fire Prevention Plan shall be submitted to Trinity Metro for approval.
  3. Ensure all tools and equipment used on job sites complies with OSF-44 standards.
  4. Use electrical tools, cords, appliances, etc., which comply with applicable OSHA and the National Electrical Code standards
  5. Secure all material and equipment, such as trashcans and lightweight construction materials, to prevent displacement from wind.

6. Have temporary electrical service equipped with appropriate ground fault circuit interrupters. This does not apply to generators less than 5 K.
7. Inspect all ladders prior to use. Defective ladders must be removed from service immediately. All ladders shall have firm footing, shall be made secure at the top and shall extend 36 inches above the landing level.
8. All outdoor temporary electrical wiring within the construction area will be Type SO direct burial type Romex, or installed in rigid conduit. If installed outside the limits of the construction area it shall meet the requirements of the electrical code.
9. Ensure that no welding or cutting operations, which may provide an open flame or hot surface, are performed until the City's Fire Marshal has been notified and a permit obtained to conduct such operations. The Fire Marshal shall inspect the area in which the work is to be performed and determine that adequate fire and safety precautions have been taken before a permit is issued.
10. Have anti-flashback devices installed on the fuel side of all fuel gas and oxygen cutting torches.
11. Secure compressed gas cylinders in upright position at all times. Valve caps shall be in place when not in use. They shall be transported and stored in accordance with federal and state standards.
12. Provide safety devices on all air compressors with hoses exceeding one-half inch inside diameter at the source of supply or branch line to reduce pressure in case of hose failure.
13. Do not allow cut-off piles to free-fall if the top on the pile stubs out of the ground above knee high. Pile holes shall be kept free of cut-off piles.
14. Control dust by using water trucks, sweeping and other additional means.
15. Ensure that no material is dropped outside the exterior wall of any building where the drop distance is more than twenty (20) feet high, unless contained in a chute enclosed on all sides. If the drop distance is less than twenty (20) feet high, the landing area must be barricaded. Material may be dropped through openings in the building, but must be barricaded at least forty-two (42) inches high and back six (6) feet or more from the edge of the open area at the landing.

16. Implement any additional measures the Trinity Metro determines to be reasonably necessary to provide project safety.

B. The Contractor shall not receive additional payment or reimbursement for safety items and procedures, which have been identified as required by the Trinity Metro's Construction Safety Program under any Trinity Metro contract.

## 2.2 Work Preparation

Before commencing with the work the Contractor shall perform the following:

A. Meet with the representatives of the Trinity Metro to discuss and develop a written Contractor's Safety Plan, which must be reviewed and found acceptable before work, may begin.

B. Establish a respiratory protection program and implement as required.

## 2.3 Contractor Personnel Requirements

It is the Trinity Metro's desire to maintain a healthy and safe place to work. To do this the Trinity Metro must have the active participation and cooperation of all Contractors, Subcontractors, and their employees. The Contractor and Subcontractor are responsible for orienting employees on the specific safety rules that must be followed by all persons working on the project. A list of minimum requirements is as follows:

A. The Contractor shall be responsible for providing and requiring the use of required personal protective equipment for its employees.

B. Hard hats shall be worn at all times while on the construction site. Hard hats shall be worn properly with the bill forward unless the wearing of eye protection prevents this, as in the case of welders. The bill is designed for facial and eye protection from falling objects, dust, etc.

C. Hearing protection shall be worn when required.

D. A serviceable pair of work construction shoes or boots made of leather or similar material shall be worn. Tennis shoes, sandals and other similar type shoes are not permitted.

E. Full length pants without excessive length or flared bottoms will be required. Shirts must cover the entire midsection and the sleeves must cover the entire shoulder. Sleeveless shirts, tank tops, net shirts, halter tops, etc., shall not be worn on the construction site.

- F. Long hair shall be contained under a hard hat or net if the individual is working where hair may become entangled.
- G. Gambling, fighting or horseplay shall not be tolerated.
- H. No employee shall possess, use, or be under the influence of drugs or alcohol while on the project.
- I. Any Contractor/Subcontractor employee who is found to be in violation of these safety rules or other Trinity Metro policies or procedures will be removed from the job site.
- J. Safety belts shall not be used as workers fall protection. Full body harnesses are the only acceptable fall protection outside of safety rails and nets. Safety belts may be used to position workers on a wall form, rebar wall, or prevent a worker from falling over a deck or work platform edge only. With the exception of steel erection, at a height of 6 feet or more positive fall protection will be used. If the fall distance exceeds 15 feet, a decelerating lanyard or device will be used.

#### 2.4 Trenches, Excavations and Stockpiled Materials

The following guidelines are required for all trenches, unmarked or unit holes, and excavations:

- A. All trench banks more than five feet high shall be properly sloped by soil classification. If the angle of slope cannot be achieved, the trench shall be shored. All shoring systems shall be either sheathing, tight planking, or a trenching shield, and shall be submitted to the Trinity Metro for review. This requirement does not apply to trenches in sound rock.
- B. Barricades around open holes, trenches, drop-offs, etc. shall be weighted or secured to the ground to prevent displacement by wind.
- C. Coverings for open trenches or excavations shall be of sufficient strength to support the weight of the heaviest vehicle operating on the roadway (i.e. 1" thick steel plate).
- D. Materials and equipment shall be stored in approved areas when not in use and where they will not constitute a hazard to rail operations. The Contractor shall inspect all construction and storage areas as often as necessary to be aware of conditions. All stockpile materials shall be prominently marked as directed by the Trinity Metro.

## 2.5 Not Used

## 2.6 Cranes

- A. The Contractor shall provide the Trinity Metro with a copy of a Crane Safety Certification for each crane brought on the job. A crane may be certified by either a master mechanic or certified manufacturer's representative.
- B. All sling and crane load line hooks shall have safety latches installed or shall be moused. (This does not apply to specialty slings and hooks, such as sorting or shake out slings or self-adjusting pipe slings, commonly called "Running I Slings.") Specialty slings and hooks shall not be used to set steel or move materials over workers.
- C. Christmas treeing of crane loads is not allowed.
- D. Out rigger cranes in use shall be blocked to the following maximum requirements.
  1. All blocking boards shall be 8" x 8" minimum for fixed boom cranes, and 4" x 4" shall be used for hydraulic cranes under 30 tons capacity.
  2. Size of float pad blocking shall be determined by the following formulas.  
  
Size = crane capacity tons + 5  
  
Example  $\frac{30 \text{ ton crane}}{5} = 6 \text{ square feet}$
  3. All out rigger cranes shall be operated only without riggers fully extended. Exception is a pick and move lift.
- E. Crane-supported worker platforms shall not be used unless the Contractor's Project Manager, Safety Representative and Resident Engineer agree in advance in each case that there is no other practical method of performing the work.
- F. Riding of crane hooks by personnel is absolutely forbidden.

## 2.7 Motor Vehicle Operations

- A. Each Contractor/Subcontractor or supplier employee driving motor vehicles on the job site shall have a valid driver's license and each such motor vehicle shall have a current inspection sticker as required by the state of Texas.

- B. No vehicle or equipment operator shall dismount any equipment without first turning off the engine and/or securing the equipment from movement.
- C. All vehicles with obstructed view to the rear shall be equipped with a functioning backup alarm.
- D. Spoil covers shall be used whenever trucks are loaded and operating off Trinity Metro property.
- E. The Contractor shall provide means for cleaning haul vehicles as needed to prevent mud or other deleterious material from accumulating on public roadways.
- F. Employee parking shall be as designated in the contract documents.
- G. All construction equipment windshields and side windows shall be clean and unbroken. Safety equipment such as head, tail, brake, and clearance lights, etc., shall be kept clean and tested daily, or at the beginning of each shift while operating on the rail job site.
- H. Heavy equipment with rotating superstructure such as backhoes and power shovels shall be guarded in such a manner that rotation of the superstructure shall not present danger to pedestrians or infringe into any traffic lane.
- I. Access to the construction sites and haul roads shall be as shown and described in the contract documents.

## 2.8 Reporting Accidents and Other Hazards

- A. All accidents which occur from operations or work performed under the Trinity Metro Construction Program or other facilities/construction contracts must 'be verified, investigated, reported, and analyzed as prescribed by this manual.

All Contractors and others involved in the programmed construction shall instruct their employees and other personnel to follow these procedures if someone is injured:

- 1, Seek medical assistance for anyone who is injured. The injured person's supervisor will see that first aid is administered.
2. Except for rescue and emergency procedures, secure the area tightly and quickly. The accident scene shall not be disturbed until it has been released by the investigating Trinity Metro officials.

3. Immediately report all accidents or hazards resulting in a fatality, the hospitalization of three or more people, or property damage estimated in excess of \$1,000 to the Trinity Metro.
4. The Contractors Safety Representative or other designated person, must notify all other parties and report the event as outlined in the Contractors Safety Plan.
5. The local Occupational Safety and Health Administration Office (OSHA) must be notified immediately in the event of an accident involving the death of an employee, or serious injury to three or more workers.
6. Employees are responsible for reporting all injuries or occupational related illnesses as soon as possible to their employer or immediate supervisor.
7. Copies of the written report shall be delivered to the Trinity Metro and the Insurers within forty-eight (48) hours of the occurrence of the accident or hazard.
8. Except in cases of emergencies, when the injured person is employed by the Contractor, the foreman or immediate supervisor must provide the injured person with written authorization to seek medical treatment.
9. All accident exposures and hazards incident to the work shall be reported. These records are to be maintained and submitted to the Trinity Metro and shall include:
  - a. An in-depth investigation to identify all causes and to recommend hazard control measures,
  - b. The total number of man-hours worked by the 10th of each month with a log of occupational injuries and illnesses (OSHA Form, No. 200 or equivalent as prescribed by 29 CFR 1904),
  - c. A list of the first aid treatments not reported on the OSHA Form No. 200.
10. In the event an employee is exposed to toxic materials or harmful physical agents, the Contractor shall notify the Trinity Metro of the incident and the corrective action taken to eliminate further exposures. A list of the first aid treatments not reported on the OSHA Form No. 200.
11. Only authorized personnel, such as representatives of City of Fort Worth's Public Safety Division, shall be given information pertaining to the event. Questions from the media and others shall be referred to the



Trinity Metro's Director of Marketing, at (817) 215-8669.

- B. The Contractors emergency procedures should be continually reviewed and adjusted to provide maximum effectiveness. All such procedures are to be included in the Contractors Safety Plan and coordinated with Trinity Metro.
- C. The Contractor will develop procedures under the Trinity Metro's guidance to contact the following offices for the events listed below:
  - Fire Department - Injuries and Medical Emergencies
  - Police Department - Bomb Threats and Public Demonstrations
- D. Emergencies must be handled by the ranking individual present. In order that necessary emergency services are supplied promptly, each Contractor should delegate responsibility for making emergency calls.
- E. First aid supplies approved by a licensed physician shall be accessible for immediate use. One first-aid kit (15 unit or better equivalent) shall be provided for each twenty-five (25) workers, or fraction thereof.
- F. At least one person shall be available at the work site to render first-aid who has valid certificates in first-aid training from the American Red Cross, or an equivalent training program that can be verified. Further, a minimum ratio of one such qualified person for every twenty-five (25) employees shall be maintained throughout the course of the construction. Said persons shall affix suitable emblems to the rear of their hard hats for identification.
- G. Actions to be taken during emergencies should be discussed regularly with the Contractors supervisory personnel and at "tool box" safety meetings.
- H. A telephone or other means of two-way communication shall be made available at the site before construction begins. Telephone numbers and locations of emergency facilities including, but not limited to, hospitals, physicians, fire and emergency medical services, and police shall be posted in conspicuous locations at the job sites and at all telephone locations.

## 2.9 Protection of the Public and Property

- A. For the purpose of this Section "public" shall be construed as including all persons not employed by the Contractor, Subcontractor, Consultant, or the Trinity Metro; however, Trinity Metro employees not directly involved with the Project, facilities or other related construction contracts shall be considered members of the public.

- B. In addition to the regulations identified within the specific contract documents, the following precautions are required:
1. The Contractor shall take all necessary action to prevent injury to the public or property damage.
  2. Work shall not be performed in any area occupied or in use by the public unless specifically permitted by the contract or in writing from the Trinity Metro
  3. When it is necessary to maintain public use of work areas involving sidewalks, entrances to buildings, lobbies, corridors, aisles, stairways, and vehicular roadways, the Contractor shall protect the public with appropriate guardrails, barricades, temporary fences, overhead protection, temporary partitions, shields, and adequate visibility. Such protection shall guard against harmful radioactive rays or particles, flying materials, falling or moving materials and equipment, hot or poisonous materials, explosives and explosive atmospheres, flammable or toxic liquids and gases, open flames, energized electric circuits, or other harmful exposures.
  4. Sidewalks, entrances to buildings, lobbies, corridors, aisles, doors, or exits that remain in use by the public shall be kept clear of obstructions to permit safe ingress and egress of the public at all times.
  5. Appropriate warnings, signs and instructional safety signs shall be conspicuously posted where necessary. In addition, a signalman shall control the moving of motorized equipment in areas where the public might be endangered.
  6. Sidewalk sheds, canopies, catch platforms, and appropriate fences shall be provided when it is necessary to maintain public pedestrian traffic adjacent to the erection, demolition or structural alteration of outside walls on any structure.
  7. A temporary fence shall be provided around the perimeter of aboveground operations adjacent to public areas except where a sidewalk shed or fence is provided by the contract or as required by subparagraph (3) above. Perimeter fences shall be at least six (6) feet high. They may be constructed of wood or metal frame and sheathing, wire mesh or a combination of both as provided in contract documents. When the fence is adjacent to a sidewalk near a street intersection, at least the upper section of the fence shall be open wire mesh from a point not over four (4) feet above the sidewalk and extending at least twenty-

five (25) feet in both directions from the corner of the fence.

8. Warning signs and lights, including lanterns, torches, flares, and electric rights, meeting Texas State Uniform Traffic Control Devices and DOT requirements, shall be maintained from dusk to sunrise along the guardrails, barricades, temporary sidewalks, and at every obstruction to the public. They shall be placed at both ends of such protection or obstructions and not over twenty (20) feet apart alongside of such protection or obstructions.
9. Temporary sidewalks shall be provided when a permanent sidewalk is obstructed by the Contractors operations. They shall be in accordance with the requirements of the local ordinances. Guardrails shall be provided on both sides of temporary sidewalks.
10. Guardrails shall be provided on both sides of vehicular and pedestrian bridges, ramps, runways, and platforms. Pedestrian walkways elevated above adjoining surfaces, or walkways within six (6) feet of the top of excavated slopes or vertical banks shall be protected with guardrails, except where sidewalk sheds or fences are provided as required by subparagraph (3) above. Guardrails shall be made of rigid materials capable of withstanding a force of at least two hundred (200) pounds applied in any direction at any point in their structure. Their height shall be approximately forty-two (42) inches. Top rails and posts may be two inches by four inches (2 x 4) dressed wood or equal material. Posts shall not be over eight (8) feet apart.
11. Barricades meeting Trinity Metro requirements shall be provided where sidewalk sheds, fences or guardrails as referenced above are not required between work areas and pedestrian walkways, roadways or occupied buildings. Barricades shall be secured against accidental displacement and shall be maintained in place except where temporary removal is necessary to perform the work. When a barricade is temporarily removed, a watchman shall be placed at all openings.
12. Fuel-burning types of lanterns, torches, flares, or other open-flame devices are prohibited.

#### 2.10 Authorization to Enter Construction Areas

- A. The Contractor shall take positive measures to control access to the construction areas. Unless specifically provided otherwise by contract, the Contractor shall fence the construction site and control access by gate. All workers on the site shall be readily identifiable by hard-hat and badge, and all persons without the

required identification shall be challenged immediately by all supervisory staff from foreman to supervisors.

- B. Only Trinity Metro construction management staff assigned to the site shall be unescorted. All other visitors will be cleared through the Trinity Metro Project Managers office and be specially badged and escorted for his or her visit. All others are to be challenged and referred to the Trinity Metro's Project Management Office.

#### 2.11 Construction Safety Inspection Report

- A. The Trinity Metro's "Construction Safety/Security Inspection Report" form is required for recording any unsafe conditions and/or acts noted. The form will primarily be used by the Contractor; however, Trinity Metro staff, and Insurance Administrator or Insurer personnel shall also use this form when inspecting the job sites.

The following instructions apply to the use of the form:

1. Number each item, beginning with #1 on each report.
  2. Print or write legibly with ballpoint pen, so that all copies are readable.
  3. Be specific under "Safety Violations." Descriptions such as, "Safety rails need repair" are adequate, but a better description would be, "Broken top rail in safety rail, 8' long at head of Smith Avenue escalator entrance needs repair." Give exact locations of safety violations. Violations that are not serious and are corrected immediately should be reported, but noted on the form as having been corrected.
  4. When unsafe conditions or unsafe acts are discovered that have the potential to cause bodily injury or property damage, the hazard should be classified as either "imminent danger or "serious." In either case immediate action should be taken to correct the hazard even before the hazard is reported as instructed in the Construction Safety Program.
  5. The last item in the column will indicate the abatement action and the deadline date, for example, "Repair or replace rail immediately. clean up accumulated trash, 9/27. Relocated flammable storage, 9/25."
- B. Inspections performed by Trinity Metro and the Contractors superintendent require the following:
    1. The person conducting the inspection must sign and date the form in the

space marked "Report Prepared By:" after the inspection is completed.

2. The violations or comments marked on the inspection report will then be reviewed with the Trinity Metro's representative.
  3. The Contractor's Superintendent, or authorized representative, will note in the "Contractors Corrective Action" column the corrective action that will be taken, such as, "Defective regulator will be removed from service this date." That person will then sign and date the report.
  4. Trinity Metro representatives will follow-up and ensure that the Contractors corrective action is completed as stated. If corrective action is not completed or is substantially delayed, the Trinity Metro will promptly notify the Contractors Superintendent.
- C. Inspections performed by the Trinity Metro representative require the following:
1. After the inspection is completed, the report form must be signed and dated in the space marked, "Report Prepared By," and reviewed with the contractor who will indicate the corrective action to be taken.
  2. A follow-up must be enacted to ensure corrective action is taken. Any undue delay or a failure to correct the hazard is reported to the Trinity Metro representative.

#### 2.12 Noncompliance

- A. If the Trinity Metro Representative's will note any noncompliance with these safety requirements, or will be advised of any noncompliance by other Trinity Metro personnel, or by other governmental agency's with the authority to enforce safety regulations, and upon such notice the Trinity Metro representative shall perform the following:
1. Notify the Contractor of the noncompliance and of the corrective action required. This notice, when delivered to the Contractor or the Contractors representative at the site of the work, shall be deemed sufficient notice of the noncompliance to immediately implement corrective action.
  2. Exercise the right to issue a suspension of work order halting all or part of the work if the Contractor fails or refuses to take corrective action within the time specified in the notice. The order will remain in effect until satisfactory corrective action has been taken.

3. Deny any claim or request from the Contractor for equitable adjustment for additional time or money on any suspend-work order issued under these circumstances.
4. Require the removal from the Trinity Metro job site of any employee or piece of equipment that is deemed to be unsafe.

END OF SECTION

## SECTION 9 FEDERAL CONTRACT AND OTHER REQUIREMENTS

### 9.1 No Federal Government Obligations to Third Parties

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

1. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### 9.2 False Statements or Claims Civil and Criminal Fraud

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### 9.3 Access to Third Party Contract Records.

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

2. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

3. Where the Purchaser is a State and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
4. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
5. Where any Purchaser which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
6. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
7. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).  
FTA does not require the inclusion of these requirements in subcontracts.

#### **9.4 Changes to Federal Requirements.**

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

#### **9.5 Civil Rights (EEO, Title VI & ADA).**

1. *Nondiscrimination* - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. *Equal Employment Opportunity* - The following equal employment opportunity requirements apply



to the underlying contract:

*a. Race, Color, Creed, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, 'Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,' 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, 'Equal Employment Opportunity,' as amended by Executive Order No. 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

*b. Age* - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

*c. Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, 'Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,' 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### **9.6 Disadvantaged Business Enterprise**

Trinity Metro notifies all potential respondents that it will affirmatively ensure, in regard to any contract entered into pursuant to this request, that disadvantaged and/or women-owned business enterprises will be afforded full opportunity to submit bids in response to this request and will not be discriminated against on the grounds of race, religion, color, age, sex, disability, or national origin in consideration for an award. Trinity Metro has in place a Disadvantaged Business Enterprise (DBE) Plan. All potential respondents understand and agree that, upon award, pursuant to this IFB, the successful bidder will abide by and utilize Trinity Metro's DBE Plan in any transactions applicable to the plan.

#### **9.7 Incorporation of FTA Terms.**

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1F](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause The Fort Worth Transportation Authority to be in violation of the FTA terms and conditions.

## 9.8 Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and shall include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or bid, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Fort Worth Transportation Authority. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Fort Worth Transportation Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## 9.9 Termination Provisions.

**1. Termination for Convenience:** The Fort Worth Transportation Authority, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**2. Termination for Default:** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Fort Worth Transportation Authority may terminate this contract for default. The Fort Worth Transportation Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Fort Worth Transportation Authority.

**3. Opportunity to Cure:** The Fort Worth Transportation Authority in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 – 60 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Fort Worth Transportation Authority's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from The Fort Worth Transportation Authority setting forth the nature of said breach or default, the Fort Worth Transportation Authority shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Fort Worth Transportation Authority from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**4. Waiver of Remedies for any Breach:** In the event that the Fort Worth Transportation Authority elects

to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the Fort Worth Transportation Authority shall not limit the Fort Worth Transportation Authority's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

### **9.10 Disputes**

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Fort Worth Transportation Authority's CEO/President. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the CEO/President. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Trinity Metro authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

**9.10.1 Performance During Dispute** - Unless otherwise directed by the Fort Worth Transportation Authority, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

#### **9.10.2 Claims for Damages**

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

#### **9.10.3 Remedies**

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Fort Worth Transportation Authority and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Texas.

#### **9.10.4 Rights and Remedies**

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Fort Worth Transportation Authority, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **9.11 Byrd Anti-Lobbying Amendment,**

31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] –

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required (Attachment C) by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee

of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Fort Worth Transportation Authority.

#### **9.12 Clean Air**

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

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

#### **9.13 Clean Water**

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

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

#### **9.14 Energy Conservation.**

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

#### **9.15 Recycled Products.**

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

#### **9.16 Buy America.**

**Buy America** - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A Proposer or offer or must submit to the FTA recipient the appropriate Buy America certification (Attachment B) with all Bids or offers on FTA-funded contracts, except those subject to a general waiver. Proposals or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Contractor is required to submit documentation of the origin of steel and iron products used by submitting ways bills monthly with pay requests.

#### **9.17 Davis- Bacon and Copeland Anti-Kickback Acts**

49 U.S.C. § 5333(a)

40 U.S.C. §§ 3141 – 3148

29 C.F.R. part 5

18 U.S.C. § 874

29 C.F.R. part 3

Applicable to: Construction contracts over \$2000.

#### **Background and Application**

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below. The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the

Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each

classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if

known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with

the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if

known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to

paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - FWTa shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, FWTa may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash

equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to FWTA for transmission to the Federal Transit Administration as requested. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.



(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at

less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract.

Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C.1001.

#### **9.18 Safe Operation of Motor Vehicles**

a. Distracted Driving, Including Text Messaging While Driving.

(1) Contractor and their subcontractors are encouraged 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 contractor, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the contract, or when performing any work for or on behalf of the contract;

(2) Contractor 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. Contractors are encouraged to include this provision in each subconsultant agreement.

b. Seat Belt Use.

Contractors and their subcontractors are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.

**9.19 Prohibition on certain telecommunications and video surveillance services or equipment.**

In accordance with 2 CFR 200.216, Trinity Metro is prohibited from purchasing certain telecommunications and video surveillance services or equipment. As such, Contractor agrees not to purchase any telecommunications and/or video surveillance services or equipment produced by the companies listed below or any subsidiary or affiliate of such entities for this contract. Fort Worth Transportation Authority is prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

**9.20 Domestic Preference.**

As appropriate and to the extent consistent with law, the Service Provider should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). Consistent with §200.322, the following items shall be defined as: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber

**SECTION 10 DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

Trinity Metro has a policy to involve Disadvantaged Business Enterprises (DBEs) to the maximum extent feasible in all phases of its procurement practices. Trinity Metro's DBE Program and Utilization forms are included in Section 9, Forms F2 & F3, DBE firms are encouraged to respond to this IFB, and joint ventures with DBE firms are also encouraged.

**DBE Goal for this Solicitation is: 20%**

**Policy Statement.** It is the policy of the Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

TO ATTAIN THESE POLICY OBJECTIVES, Trinity Metro HAS SET DBE SUBCONTRACTING GOALS FOR DBE SUBCONTRACT PARTICIPATION. EACH INVITATION FOR BID (IFB) OR INVITATION FOR BID (IFB) WILL SPECIFY WHAT THE DBE SUBCONTRACTING GOAL IS FOR THAT PROCUREMENT.

**DBE Obligation.** Trinity Metro and its contractors agree to ensure that DBEs as defined in 49 CFR Part 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, Trinity Metro and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the opportunity to compete for and perform contracts. Trinity Metro and its contractors shall not discriminate on the basis of race, color, religion, sex, age or national origin, in the award and performance of DOT-assisted contracts.

**Disadvantaged Business Enterprise (DBE)** DBEs are for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and control management and daily business operations.

African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans and women are presumed to be socially and economically disadvantaged.

Other individuals can be characterized as socially and economically disadvantaged on a case-by-case basis.

To participate in the program, a small business owned and controlled by socially and economically disadvantaged individuals must receive DBE certification from their relevant state or local transportation agency. *NOTE: this is not a federal certification and is not applicable to federal contracts.*

Irrespective of what the size standard is, a firm cannot exceed the size of \$20.41 million and still be seen as a *Small Business*. This size limit is periodically adjusted for inflation.

Trinity Metro is a member of a unified certification program administered by the North Central

Texas Regional Certification Agency (NCTRCA).

**Failure to achieve DBE contract goals.** If the contractor fails to carry out the contract utilizing at least the same percentage of DBE participation shown on its successful bid, the contract payments may be reduced at Trinity Metro's option as a liquidated damage, and not as a penalty, by the amount equal to the mathematical dollar difference between the total contract amount multiplied by the DBE percentage goal and the actual dollar amount of documented DBE participation in the contract. However, any authorized adjustment in the percentage of DBE participation approved by Trinity Metro may be substituted in this formula for the DBE percentage goal as originally established.

**Exception.** Where the contract will be for procurement of a standard manufactured item or other similar procurement not open to subcontracting opportunities, and no certified DBE has submitted a bid, Trinity Metro may consider a bid which does not fully comply with the DBE requirements.

Trinity Metro has a written document that fully describes its DBE policy and program. The document is available upon request from Trinity Metro DBE Administrator, 801 Grove Street, Fort Worth, Texas 76102.

**DBE ASSISTANCE ORGANIZATIONS** Trinity Metro has provided a list of DBE firms in Exhibit B. For additional assistance in identifying qualified DBE firms, you can also contact one of the organizations below:

Fort Worth Transportation Authority  
ATTN: Contract Administration and Procurement  
801 Grove Street  
Fort Worth, Texas 76102  
(817) 215-8760  
[contractmgmt@ridetm.org](mailto:contractmgmt@ridetm.org)

North Central Texas Regional Certification Agency  
624 Six Flags Drive Suite # 216  
Arlington, Texas 76011  
(817)640-0606  
(817) 640-6315 (fax)  
[www.nctrca.org](http://www.nctrca.org)

**Technical Assistance** Provided by:  
Tarrant County Asian American Chamber of Commerce  
1818 E. Pioneer #100  
Arlington, Texas 76010  
(817) 797-9144

Fort Worth Metropolitan Black Chamber of Commerce  
1150 South Freeway, Suite 211  
Fort Worth, Texas 76104

(817) 531-6538  
(817) 332-6438 FAX  
[www.fwmbcc.org](http://www.fwmbcc.org)

Dallas Forth Worth MBDA Business Center  
8828 N. Stemmons Freeway, Ste 550 B  
Dallas, TX 75247  
United States  
214-920-2436

Texas Unified Certification Program [www.dot.state.tx.us/business/tucpinfo.htm](http://www.dot.state.tx.us/business/tucpinfo.htm)  
Fort Worth Hispanic Chamber of Commerce  
1327 North Main Street  
Fort Worth, Texas 76106-8576  
(817) 625-5411  
(817) 625-1405 FAX  
[www.fwhcc.org](http://www.fwhcc.org)

American Indian Chamber of Texas  
11245 Indian Trail  
Dallas, Texas 75229  
972-241-6450

Fort Worth Business Assistance Center (BAC)  
1150 South Freeway  
Fort Worth, Texas 76104  
(817) 871-6006  
(817) 871-6031 FAX  
[www.fwbac.com](http://www.fwbac.com)

### **COMPLIANCE REQUIREMENTS**

Compliance with the DBE Policy and Program of Trinity Metro is essential in order for a Bidder to be eligible for the contract under this solicitation. Compliance consists of: (a) meeting or exceeding the DBE percentage participation goals established for this solicitation; or (b) demonstrating good faith efforts to meet such participation goals; or (c) demonstrating that the solicitation comes within the exception to the DBE percentage participation goals as being a procurement for a standard manufactured item, or other similar procurement not open to sub-contracting opportunities.

In order to demonstrate compliance through its "good faith efforts" to obtain the DBE percentage participation goals, a Bidder must submit with its bid sufficient information to enable Trinity Metro to determine that the efforts made by the Bidder to obtain DBE participation were such efforts that a Bidder actively and aggressively sought to meet the goals. Actions or efforts which are merely "pro forma" or "going through the motions" do not constitute good faith efforts to obtain the participation of DBEs. Similarly, even efforts which are sincerely motivated but which,

given all circumstances relevant to the particular solicitation, could not be reasonably expected to produce a level of DBE participation sufficient to meet the goal do not constitute good faith efforts. In determining whether a Bidder has made a good faith effort to obtain the DBE participation percentage goal, Trinity Metro will not only look at the kinds of efforts that the Bidder has made, but also the quality and intensity of these efforts.

To assist Trinity Metro in making the required judgment concerning fulfillment of good faith efforts, the Department of Transportation has prepared a list illustrating the kinds of actions which would indicate that a Bidder has made a good faith effort. These kinds of efforts include:

- (i) Bidder attended pre-bid meetings scheduled by Trinity Metro to inform DBEs of contracting and subcontracting opportunities;
- (ii) Bidder selected portions of the work to be performed by certified DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
- (iii) Bidder advertised in general circulation, trade association, and/or minority focus media concerning the sub-contracting opportunities;
- (iv) Bidder provided written notice to a reasonable number of specified DBEs that their interest in the procurement was being solicited, in sufficient time to allow such DBEs to participate effectively;
- (v) Bidder followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
- (vi) Bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the solicitation;
- (vii) Bidder negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on their investigation of the capabilities;
- (viii) Bidder made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by Trinity Metro or the Bidder as prime Contractor;
- (ix) Bidder effectively used the services of available minority community organizations; minority contractor groups; local, state and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs (such as those DBE Assistance Organizations listed above).

This is not intended to be an inventory or checklist. DOT does not require Trinity Metro to insist that any Bidder do any particular one or any combination of the items on this list. It is not intended to be an exclusive or exhaustive list of all actions a Bidder, acting in good faith actively and aggressively seeking to obtain DBE participation would make. Other types of efforts or factors

may be relevant in appropriate cases.

### **COMPLIANCE DOCUMENTATION**

In order to demonstrate compliance with Trinity Metro DBE Policy and Program it is essential that full documentation be submitted at the time of the bid. This documentation consists of completion of the relevant statements appearing on Section 11 of this IFB packet, and attaching additional relevant documentation and information where specified.

Trinity Metro DBE COMPLIANCE STATEMENT and Trinity Metro SCHEDULE OF DBE UTILIZATION must be completed by all Bidders. Trinity Metro GOOD FAITH EFFORT DOCUMENTATION must also be completed by a Bidder who does not meet the DBE percentage participation goals established for this procurement but who wishes to show that it complies with the policy and program because of having made "good faith efforts" to meet those goals.

Bidders who believe that bid meets the exception to the DBE Policy and Program as being one for the procurement of a standard manufactured item or other similar procurement not open to sub-contracting opportunities must, in addition, fully explain the facts on which it bases its belief that this solicitation meets the terms of that exception. Some space at the bottom of the DBE Compliance Form (above the signature lines entitled "Exception Information") has been provided for exception information. If additional space is needed to provide complete exception information, please attach additional sheets titled "DBE Compliance Statement Exception Information."

### **COUNTING PARTICIPATION TOWARD MEETING DBE GOAL**

DBE participation shall be counted toward meeting goals set in accordance with DOT's DBE regulations at 49 CFR Part 26 and Trinity Metro's program as follows:

- (i) Once a firm is determined to be a certified DBE in accordance with the provisions specified in this program, the total dollar value of the contract or subcontract awarded to it is counted toward the applicable goal, if the contract is a fixed price contract. For other types of contracts, only actual payments to the certified DBE will be counted toward the applicable goal.
- (ii) Trinity Metro or the contractor employing a certified DBE firm may count toward its goals a portion of the total dollar value of a contract with a joint venture eligible under the DBE eligibility criteria specified herein equal to the percentage of the ownership and control of the certified DBE partner in the joint venture.
- (iii) Trinity Metro or a contractor will count toward its goal only expenditures to certified DBEs that perform a commercially useful function in the work of a contract. A certified DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a certified DBE is performing a commercially useful function, Trinity Metro or a contractor shall evaluate the



amount of work subcontracted, industry practices, and other relevant factors.

(iv) Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to rebut this presumption to Trinity Metro. Trinity Metro's decision on the rebuttal of this presumption is final, subject to review by the Department of Transportation in instances of DOT-assisted contracts.

(v) Trinity Metro or a contractor may count toward its DBE goals expenditures for materials and supplies obtained from certified DBE suppliers and manufactures provided that the DBEs assume the actual and contractual responsibility for the provision of the materials and supplies. Trinity Metro or a contractor may count its entire expenditure to a certified DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale). Trinity Metro will count 60 percent of its expenditures to certified DBE suppliers that are not manufacturers, provided that such suppliers perform a commercially useful function in the supply process.

## SECTION 11 SAFETY, SECURITY AND EMERGENCY REQUIREMENTS

Site visitors, to include contracted individuals providing services to Trinity Metro are required to comply with the following safety, security, and/or emergency guidelines:

- All providers will meet federal, state, and local regulatory guidelines related to safe practices and/or are related to safety in order to avoid hazards, potential hazards, and/or damage to Trinity Metro property.
- Contractors and Vendors are responsible for their equipment and personnel.
- In the event of an emergency, site visitors shall follow emergency response best practices; each provider should have an emergency plan. As needed, Trinity Metro designee(s) may need to review an emergency plan for acceptance. This will depend on the area work is being conducted. Designated rallying points may be provided by Trinity Metro representatives, so please ask and include in any Job and/or Safety Briefings to be prepared in the event of an emergency evacuation.
- Contractor and vendor providers are required to notify a Trinity Metro representative, a.k.a. point of contact, after any emergency events. This may be the Procurement Department representative or designated project lead. Alternatively, Trinity Metro's Operations Radio Control Center, or Security Center shall be notified as is deemed necessary, when reporting security or safety-related events requiring Trinity Metro response. Site visitors conducting work on Trinity Metro property should know whom to notify prior to commencement of work on Trinity Metro property.
- Vendors, Contractors, and Sub-Contractors working within any Bus Lot, Train Station, and/or Transit Center are required to provide scope of work being performed to the appropriate Trinity Metro designee so details for coordinating with revenue service vehicles (trains, buses, cutaways, and vans) paths and schedules will not disrupt any transit service.
- Trespassing and/or unauthorized site work is prohibited. This is especially more significant whenever the need arises to be within 25 feet of any railroad track rail unless on public right away such as platforms or grade crossings. Roadway Worker Protection requirements per federal law (49 CFR Part 214) may require successful completion of training and authorized access. Disruptions to commuter passenger railroad operations is unacceptable and may be subject to federal fines.
- Depending on the nature of the work being performed, Trinity Metro may require submission of a safety plan, security plan, and/or emergency plan subject to review and acceptance by the Chief Safety Officer or Director of Security or other designee.
- In the event of an accident or incident resulting in harm to an individual or damage to Trinity Metro property, a safety stand down may be required. Accordingly, when deemed necessary, corrective action and preventive measures(s) subject to approval or acceptance by the Chief Safety Officer or Director of Security or other designee may be required prior to resuming work on behalf of Trinity Metro or on Trinity Metro property.

- Larger scale projects and procurement of equipment may deem it necessary to comply with Safety and Security Certification Program requirements.
- Questions regarding safety, security, and/or emergency requirements may be directed to Trinity Metro's Procurement designee or lead Project Manager.

**SECTION 12 ATTACHMENTS AND FORMS**

**THE FOLLOWING FORMS AND CERTIFICATIONS SHALL BE COMPLETED BY BIDDER AND SUBMITTED WITH BID, AS SPECIFIED IN SECTION 1 MINIMUM REQUIREMENTS.**

- F1 - Attachments and Amendments**
- F2 - DBE Compliant Statement**
- F3 - Schedule of DBE Utilization**
- F4 - Good Faith Effort Documentation**
- F5 - Good Faith Effort Information Requests**
- F6 - Certification of Contractor Regarding Debarment, Suspension, and Other Responsibility Matters**
- F7 - Conflict of Interest Acknowledgement and Certification**
- F8 - Certification of Compliance with Restriction on Lobbying**
- F9 - Buy America Certification**
- F10 - Business Questionnaire & List of References**
- F11 - List of References for Similar Projects**
- F12 - Affidavit of Non-Collusion**
- F13 - Prohibition of Contracts with Companies Boycotting Israel**
- F14 - Trinity Metro Safety, Security and Emergency Requirements**
- F15 - Bid Form**

**Note: Failure to complete and return the forms as indicated above will result in rejection of the bid/proposal. The making of a material misrepresentation of fact could be a basis for disqualification and may cause a firm to be considered for classification as an irresponsible contractor and barred from the Trinity Metro work for a period not exceeding six months.**

**F1 - ATTACHMENTS AND AMENDMENTS**

The undersigned acknowledges receipt of attachments and amendments for The Fort Worth Transportation’s solicitation ***IFB 23-T026 Trinity Lakes Station Parking Lot Construction. Please list each of the attachments and amendments.***

Failure to acknowledge receipt of all attachments and amendments may cause bidder/proposer to be considered nonresponsive to the solicitation.

ATTACHMENTS:

ADDENDUMS:

Acknowledged receipt of each attachment and amendment must be clearly established and included with the bid/proposal response.

<i>Authorized Signature</i>	<i>Name of Company</i>
<i>Printed Name and Title</i>	<i>Date</i>

**F2 - DBE COMPLIANCE STATEMENT**

Check the statement below that applies to your submittal.

           **1. Bid meets or exceeds DBE percentage participation goal established for this procurement.** You must submit the Schedule of DBE Utilization with bid. If you are a certified DBE, complete the first set of questions on Schedule of DBE Utilization for yourself and submit DBE certification number. Submit DBE certification numbers for each DBE you intend to use.

           **2. Bid does not meet the DBE percentage participation goal established for this procurement, but we have made bona fide good faith efforts to reach those goals.** If this statement applies, you must submit the Schedule of DBE Utilization and the DBE Good Faith Effort Documents, along with bid, together with all other documentation of good faith efforts which you wish Trinity Metro to consider in evaluating your bid. Only documentation submitted with bid will be considered. Submit DBE certification numbers for each DBE you intend to use.

           **3. Bid does not have any DBE percentage participation for this procurement, but we believe this procurement meets the following exception to Trinity Metro’s DBE Policy:**

*“This solicitation is for the procurement of a standard manufactured item or other similar procurement with no subcontracting opportunities.”*

Firm should check “Yes” or “No” to both questions below and then explain in the exception information area below. Failure to provide an explanation may render the bid non-responsive (Subcontracting opportunities include things such as: delivery, assembly, installation, painting, suppliers, etc. Supplies are items purchased specifically for this procurement, other than the standard manufactured item requested by the invitation for bid).

Will you perform this entire contract without subcontractors?  Yes  No

Will you perform this entire contract without suppliers?  Yes  No

If you answered “no” to either question above, please fully explain why you are seeking the exception. The existence of subcontractor and supplier opportunities usually indicates that option # 2 and the Good Faith Effort Documents apply.

Exception Information (attach additional sheets, titled “Exception Information”, if needed):

<b>Authorized Signature</b>	<b>Name of Company</b>
<b>Printed Name and Title</b>	<b>Date</b>

Note: Failure to complete and return the DBE forms as indicated above, will result in rejection of the bid. The making of a material misrepresentation of fact could be a basis for disqualification and may cause a firm to be considered for classification as an irresponsible contractor and barred from Trinity Metro’s work for a period of not exceeding six months.

**F3 - SCHEDULE OF DBE UTILIZATION**

List all DBE’s expected to participate in performing the contract resulting from this solicitation. If you have no DBE participation, but you are subcontracting a portion of this procurement (i.e., work, deliveries, transportation, parts and supplies, etc.), then sign and date this form below and completely and thoroughly fill out and sign the Good Faith Effort Documents.

Note: Any firm listed below must be certified by the NCTRCA and/or listed on Trinity Metro Texas TUCP web site and their corresponding certification number should be listed.

Note: If Prime Contractor is a certified DBE, complete first section below for “self”.

Name of DBE Subcontractor of DBE Prime Contractor	
Address & Telephone Number	
Subcontracting Tier:	Type of Work to be Performed:
Dollar Amount for Work: \$	DBE Certification #:
Name of DBE Subcontractor of DBE Prime Contractor	
Address & Telephone Number	
Subcontracting Tier:	Type of Work to be Performed:
Dollar Amount for Work: \$	DBE Certification #:
Name of DBE Subcontractor of DBE Prime Contractor	
Address & Telephone Number	
Subcontracting Tier:	Type of Work to be Performed:
Dollar Amount for Work: \$	DBE Certification #:

The undersigned will enter into a formal agreement with DBE Subcontractors for work listed above in this schedule, conditioned upon execution of a contract with The Trinity Metro.

<b>Signature</b>	<b>Title</b>	<b>Date</b>

**F4 - GOOD FAITH EFFORT DOCUMENTATION**

If the bidder did not meet or exceed the Trinity Metro's DBE subcontracting goal, then the bidder must comply with the Trinity Metro's DBE policy by documenting that good faith efforts were made. Please check "Yes" or "No" below if you have completed the good faith effort form, attached any related support documents, and provided any additional information/support/clarification beyond that requested in the good faith effort documents. Providing additional information is the bidder's responsibility to ensure that sufficient information is provided to the Trinity Metro, so that good faith efforts can be comprehensively evaluated.

We (bidder) have: \_\_\_\_\_ Yes \_\_\_\_\_ No

\_\_\_ Completely filled out this good faith effort form with signature and date.

\_\_\_ Attached any related supporting documents, and also

\_\_\_ Provided any additional information and/or documents that we deemed necessary to support and/or clarify the good faith efforts that we made.

It is the bidder's responsibility to correctly, accurately, and substantively provide all necessary information to Trinity Metro, at Trinity Metro time of bid submission. The information provided by the bidder must be sufficient enough for Trinity Metro to determine that the efforts made by the bidder to obtain DBE participation were such efforts that a bidder actively and aggressively seeking to meet those goals would make. Actions or efforts which are merely "pro forma" or "going through the motions" do not constitute good faith efforts to obtain the participation of DBE's. Trinity Metro will look at the kinds of efforts the bidder has made, as well as the quality and intensity of those efforts.

This information will then be evaluated by Trinity Metro's DBE Liaison or a designee of the Trinity Metro for good faith effort compliance. Failure to comply will render the bid non-responsive.

Note: The DOT does not require Trinity Metro to insist that any bidder do any particular one or any combination of the items requested in DBE forms. It is not intended to be an exclusive or exhaustive list of all actions a bidder, acting in good faith, actively and aggressively seeking to obtain DBE participation would make. Other types of efforts or factors may be relevant in appropriate cases.



**F5 - GOOD FAITH EFFORT INFORMATION REQUESTS**

1. Please list each and every subcontracting and/or supplier opportunity which will be available in the completion of this project, regardless of whether it is to be provided by a DBE or non-DBE (use additional sheets, if needed).

Subcontracting Opportunities		Supplier Opportunities	
1.		1.	
2.		2.	
3.		3.	
4.		4.	
5.		5.	
6.		6.	
7.		7.	
8.		8.	
9.		9.	
10.		10.	
11.		11.	
12.		12.	
13.		13.	
14.		14.	
15.		15.	

(Bidder may make as many copies of this page as needed).

**Type an X in the Yes or No Box provided**

2.	Did you obtain a list of DBE firms from the Trinity Metro’s DBE Department (a list may or may not have been included with the Invitation for Bid or Proposal). If one was not included, or if additional lists are needed, they can be obtained from the DBE Department upon request.	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
3.	Did you attend the pre-bid conference(s) scheduled by the Trinity Metro? Date of Pre-Bid Meeting: <input type="text"/>	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
	Did you request bids from DBEs that also attended the pre-bid conference?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
DBE Firm/Person Contacted?			
4.	Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number 1. above by mail?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
5.	Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you	YES	<input type="checkbox"/>

	listed previously on question number 1. by fax?	NO	<input type="checkbox"/>
6.	Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number 1. above by telephone?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
7.	Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number 1. above by some other means?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
	If yes, please explain:		
8.	Did you advertise in local newspapers?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
	If yes, then please attach a copy(s) of advertisements, with the date advertised and list the specific newspapers that were used.		
9.	Please provide the following information for every DBE firm that you contacted by any method or that initiated contact with you, but will <i>not</i> be used on this contract:	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
a.	Attach a listing of every DBE firm that you solicited a bid from or that initiated contact with you to ask about and/or submit an unsolicited bid to you and include their mailing address, phone and fax numbers, the date that solicitations were sent, and the method that the solicitation was sent (i.e., mail, fax, phone, personal contact, etc. . .) and please provide a DBE contact name, if you have one.		
b.	Indicate the subcontracting area(s) that you solicited bids on from each DBE firm and/or the subcontracting area(s) for which each DBE firm submitted a bid to you, if different from what you solicited.		
c.	If DBE firms submitted bids, but those bids were rejected, provide an explanation for rejecting those bids and attach documentation to support the reason for rejecting the bid (i.e., letters, memos, DBE bid amount, telephone notes, meeting notes, etc.).		
d.	If a DBE firm bid was rejected because of price, then list the DBE firm's bid price and the name and bid price of the subcontractor or supplier that you will use in lieu of the rejected DBE firm.		
e.	Indicate the number of times that follow-up contact was made with DBE firms after the initial solicitations of interest.		
10.	Did you contact all DBE firms that you solicited bids from in a timely manner such that the DBE firms had at least 10 days prior to the bid submission date to prepare and submit a bid to you?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
	If NO, please explain:		
11.	Did you negotiate in good faith with interested DBE firms by, for instance, providing timely information regarding plans and specifications, breaking down subcontracts into economically feasible units to facilitate DBE participation, maintaining accessible lines of communications, etc.?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>
12.	Did you assist interested DBE firms in obtaining bonding, lines of credit, or insurance required by the Trinity Metro or by you as prime contractor?	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>

**ADDITIONAL INFORMATION**

Please provide any additional information and/or documents that you (the bidder) deem necessary to support and/or clarify that you made good faith efforts to meet the DBE subcontracting goal (be sure to attach any support documents).

Signature:		Date:	
Name / Title:			

**F6 - CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The potential contractor for Trinity Metro contract (hereinafter "PRIMARY PARTICIPANT"), \_\_\_\_\_ certifies to the best of its knowledge and belief, that it and its principals:

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

(If the primary participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification)

THE PRIMARY PARTICIPANT CERTIFIES OR AFFIRMS TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS ON 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature:		Date:	
Name / Title:			
Company Name:			

**Primary participant is required to secure from every subcontractor this same certification and shall submit such to TRINITY METRO prior to such subcontractor's commencing work under this contract. Contractor may make as many copies of this schedule as needed for certification by all subcontractors.**

(If the subcontractor is unable to certify to any of the statements above in this certification, the subcontractor shall attach an explanation to this certification)

THE UNDERSIGNED SUBCONTRACTORS FOR TRINITY METRO, CERTIFY OR AFFIRM AS TO ITSELF AND ITS PRINCIPALS TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SET OUT ABOVE AND SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTAND THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE TO THIS CERTIFICATION.

Signature:		Date:	
Name / Title:			
Company Name:			

Signature:		Date:	
Name / Title:			
Company Name:			

## F7 - CONFLICT OF INTEREST ACKNOWLEDGMENT AND CERTIFICATION

### 1. Policy

In order to promote fairness and impartiality in Trinity Metro's procurement process, involvement in any decision making role in the solicitation, or in the awarding or administration of a resulting contract by any Related Person who might receive some Benefit is prohibited. "Related Person" is defined as any employee, officer, Executive Committee member, or agent of Trinity Metro. "Benefit" is defined as any direct or indirect pecuniary, financial, or other tangible advantage, gain, promotion, or interest growing out of or related in any manner to the solicitation or to a contract or subcontract growing out of the solicitation. Such involvement of any Related Person is also prohibited when a person bearing certain relationship to the Related Person ("Other Related Person") may receive a Benefit. Such "Other Related Person" is defined as any member of a Related Person's immediate family (a spouse, child, parent, brother or sister), a partner of any Related Person, or any person or organization which employs or is about to employ a Related Person or Other Related Person. If a Related Person or Other Related Person will or may so benefit, a prohibited conflict of interest may exist.

### 2. Disclosures

Your obligation, as a prospective contractor under this solicitation, is to disclose fully all information you have or may acquire which has to do with any such Benefit which may come to any Related Person or Other Related Person. In considering the possibility of the existence of such benefit, you also need to consider each person and firm you believe may be involved as a joint venturer, or subcontractor, or other similar role in carrying out and performing a contract with Trinity Metro pursuant to the solicitation. In other words, if you are aware of any business, financial, or other interest, or actual or potential employment relationship between any Related Person or any Other Related Person, on the one hand, and yourself or any other person or firm you believe may be involved in carrying out the contract to be awarded pursuant to this solicitation, on the other hand, you have an affirmative obligation to fully disclose that information to Trinity Metro. You are encouraged to contact the Director of Contract Administration and Procurement or Trinity Metro's General Council prior to the deadline for submitting your Response (defined as a bid, proposal or other response to this solicitation), make such disclosure, and request a ruling as to whether any prohibited conflict of interest does in fact exist.

In order for your Response to be considered RESPONSIVE to this solicitation, it is mandatory that you complete and execute the Acknowledgment and Certification below, and include with your Response, written disclosure of all information relative to any potential conflict of interest which may be known to you, and which you have not disclosed to TRINITY METRO in writing prior to the submission of your Response.

### **ACKNOWLEDGMENT AND CERTIFICATION (Potential Contractor)**

The undersigned potential contractor of Trinity Metro hereby acknowledges receipt and understanding of the Conflict of Interest provisions set out above; and hereby certifies that, except as heretofore or herewith fully disclosed in writing, to the best of potential contractor's knowledge and belief, no such conflict exists, or is likely to exist in the future pertaining to this procurement should the contract be awarded to potential contractor; and potential contractor further hereby promises to promptly notify TRINITY METRO in writing if such knowledge or belief changes in the future.

**By:**

Signature:		Date:	
Name / Title:			

**ACKNOWLEDGMENT AND CERTIFICATION  
(Recommended Subcontractor)**

The undersigned recommended subcontractor of Trinity Metro hereby acknowledges receipt and understanding of the Conflict of Interest provisions set out above; and hereby certifies that, except as heretofore or herewith fully disclosed in writing, to the best of recommended subcontractor's knowledge and belief, no such conflict exists, or is likely to exist in the future pertaining to this procurement should the contract be awarded to recommended subcontractor; and recommended subcontractor further hereby promises to promptly notify Trinity Metro in writing if such knowledge or belief changes in the future.

**By:**

Signature:		Date:	
Name / Title:			

***Note: Bidder shall make copies of the Conflict of Interest document and Acknowledgment and Certification form and provide same to each subcontractor bidder recommends for the contract. Bidder is required to secure an acknowledgment and certification from each subcontractor bidder recommends and submit such certification to TRINITY METRO prior to a subcontractor beginning any work under this contract.***

**F8 - CERTIFICATION OF COMPLIANCE WITH RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_ (Name of certifying official), the \_\_\_\_\_ (Title or position of certifying official) of \_\_\_\_\_ (name of company), do hereby certify on behalf of said company to Trinity Metro that:

- (1) It will not use federal funds to support lobbying.
- (2) No federal funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any 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.
- (3) If any funds other than Federal 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 this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (4) *All subcontractors and sub-recipients shall certify and disclose accordingly.*  
This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. 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:

Signature:		Date:	
Name / Title:			

**Note: Bidder shall make copies of this blank page and obtain certification from all subcontractors that bidder is recommending, and submit such certifications to Trinity Metro prior to such subcontractors beginning any work under this contract.**

**F9 – BUILD AMERICA/BUY AMERICA CERTIFICATION**

Section 165 (a) of the Surface Transportation Act of 1982 permits FTA participation in this contract only if iron, steel and/or manufactured products used in the contract are produced in the United States. If the contract is for the procurement of buses, vans or other "rolling stock" as defined in 49 C.F.R. Part 661, the cost of components produced in the United States shall exceed 70% of the cost of all components, and final assembly shall take place in the United States. Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52 permits FTA participation in this contract if all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

Complete one of TRINITY METRO two certifications below if this contract is for the procurement of such rolling stock, or if steel and manufactured products are otherwise used in this contract:

1. The Proposer hereby certifies that it will comply with the requirements of Section 165 (a), Pub. L. No. 117-58, §§ 70901-52 (or the requirements of Section 165 (b)3 if this contract is for the procurement of "rolling stock") of the Surface Transportation Assistance Act of 1982 and the regulations in 49 C.F.R. 661.

Signature:		Date:	
Name / Title:			
Company Name:			

**OR**

2. The Proposer hereby certifies that it cannot comply with the requirements of Section 165(a), Pub. L. No. 117-58, §§ 70901-52 (or with the requirements of Section 165(b)3 if this contract is for the procurement of "rolling stock") of the Surface Transportation Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165(b) of the Surface Transportation Assistance Act and regulations in 49 C.F.R. 661.7. (Fully explain and document facts on which Proposer relies for its belief that it qualifies for exception).

Signature:		Date:	
Name / Title:			
Company Name:			



### F10 - BUSINESS QUESTIONNAIRE

This questionnaire, the requested list of references and the authorization to release financial information are used in part to assist in determining a potential contractor's responsibility. Bidder's shall submit the information with the offer. All information shall be current and traceable. Each venture of a joint venture shall submit a separate signed form.

Trinity Metro reserves the right to make additional inquiries based on information submitted, or the lack thereof. Questions concerning this questionnaire or the authorization form shall be directed to the contact person identified on the solicitation.

1. Legal Name of Bidder ("Business"):
2. List name(s) and business address of officers and directors for corporations, partners for partnerships, and ventures for joint ventures (attach additional pages as necessary):
3. Number of years in business under present business name:
4. If applicable, list all other names under which the business identified above operated in the last 5 years:
5. Annual Gross Revenue (past year): M=millions K=thousands
<input type="checkbox"/> \$100K - \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1M-\$10M <input type="checkbox"/> \$10M-\$20M <input type="checkbox"/> >\$20M
6. Has the business, or any officer or partner, failed to complete a contract? <input type="checkbox"/> Yes <input type="checkbox"/> No
7. Is any litigation pending against the business? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Has the business ever been declared "not responsible" for the purpose of any governmental agency contract award? <input type="checkbox"/> Yes <input type="checkbox"/> No
9. Has the business been debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise disqualified from bidding, proposing or contracting? <input type="checkbox"/> Yes <input type="checkbox"/> No
10. Are there any proceedings pending relating to the business' responsibility, debarment, suspension, voluntary exclusion or qualification to receive a public contract? <input type="checkbox"/> Yes <input type="checkbox"/> No

11. Has the government or other public entity requested or required enforcement of any of its rights under a surety agreement on the basis of a default or in lieu of declaring the business in default? _____ Yes _____ No
12. Is the business in arrears on any contract or debt? _____ Yes _____ No
13. Has the business been a defaulter, as a principal, surety or otherwise? ___ Yes ___ No
14. Have liquidated damages or penalty provisions been assessed against the business for failure to complete work on time or for any other reason? _____ Yes _____ No
15. Does the business maintain a drug-free workplace? _____ Yes _____ No
16. If a “yes” response is given under questions 6-14, provide a detailed explanation including dates, reference to contract information, contacts, etc. (attach additional pages as necessary):
17. Business Identification Number (EIN, etc.)
18. Provided completed <b>List of References for Similar Projects</b> form. _____ Yes _____ No

I, individually and on behalf of the business named in this Business Questionnaire, do by my signature below, certify that the information provided in this questionnaire is true and correct. I understand that any false statements or misrepresentations regarding the business named above may result in:

1. *Termination of any or all contracts which Trinity Metro has or may have with the business,*
2. *Disqualification of the business from consideration for contracts,*
3. *Removal of the business from Trinity Metro’s bidders’ list and/or*
4. *Legal action(s) applicable under federal, state or local law.*

Signature:		Date:	
Name / Title:			
Company Name:			

**F11 - LIST OF REFERENCES FOR SIMILAR PROJECTS**  
*(Use additional pages as necessary)*

<b>1. Project:</b>
Date of Completion (if applicable):
Company Name:
Address:
Contact Name:
Telephone Number:
E-Mail Address:
<b>2. Project:</b>
Date of Completion (if applicable):
Company Name:
Address:
Contact Name:
Telephone Number:
E-Mail Address:
<b>3. Project:</b>
Date of Completion (if applicable):
Company Name:
Address:
Contact Name:
Telephone Number:
E-Mail Address:
<b>4. Project:</b>
Date of Completion (if applicable):
Company Name:
Address:
Contact Name:
Telephone Number:
E-Mail Address:

**F12 - AFFIDAVIT OF NON-COLLUSION**

Each member of the proposing team (**prime and subs**) shall submit a signed and notarized Form 12 – Non-Collusive Affidavit.

THE UNDERSIGNED, HAVING SUBMITTED BID TO PROVIDE Bus and Van Batteries in response to IFB 23-T026 swear that said bidder, quoter, or proposer has not directly or indirectly entered into any combination, collusion, undertaking, or agreement relative to price to be bid by any person, or to prevent any person, or persons, or company from submitting pricing; or to entice any bidder, quoter, or proposer to refrain from pricing for such supplies, merchandise, service, or contract, and that said bid so made is without reference or regard to any other bid or bids, and without agreement, understanding or combination, either directly or indirectly, with any person or persons, with reference to such bidding in any way or manner whatsoever.

Signature:		Date:	
Name / Title:			
Company Name:			

STATE of \_\_\_\_\_

County of \_\_\_\_\_

This instrument was subscribed and sworn before me this \_\_\_\_ day of, \_\_\_\_\_, 20\_\_.

(Personalized Seal Below)

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
My Commission Expires (Date)

**Failure to properly Notarize and Return This Form with the Bid Will Invalidate Your Bid**

**F13 - PROHIBITION OF CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**  
(This form must be completed and submitted with the bid/proposal)

House Bill 89, effective September 1, 2017, amended the Texas Government Code to add Chapter 2270, Prohibition of Contracts with Companies Boycotting Israel.

Effective September 1, 2017, a state agency and a political subdivision (which includes a transportation authority) may not enter a contract with a company for goods or services unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract.

“Boycott Israel” is defined to mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

“Company” is defined to mean a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

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I, \_\_\_\_\_ (Name of certifying official), the \_\_\_\_\_ (Title or position of certifying official) of \_\_\_\_\_ (name of company), do hereby verify on behalf of said company to Trinity Metro that said company does not Boycott Israel and will not Boycott Israel (as that term is defined in Texas Government Code Section 808.001) during the term of this contract.

Signature:		Date:	
Name / Title:			

PRICE PROPOSAL FORM

Bid Item	Description	Unit	Quantity	Unit Price	Total Cost
<b>Unit 1: Parking Lot</b>					
1	Unclassified Excavation	CY	5000		
2	Embankment (Furnish/Install, Complete in Place)	CY	5000		
3	Clearing and Grubbing	AC	5		
4	6" Concrete Pavement (Furnish/Install, Complete in Place)	SY	19000		
5	4" Concrete Sidewalk (All Types) (Furnish/Install, Complete in Place)	SF	5000		
6	Hydrated Lime (6" at 33lb/SY) (Parking Lots & ADA Accessible Routes)	TON	356		
7	6" Lime Treatment (Parking Lots & ADA Accessible Routes))	SY	19800		
8	Cement (6" at 43lb/SY) (Parking Lots & ADA Accessible Routes)	TON	396		
9	6" Cement Treatment (Parkings Lots & ADA Accessible Routes)	SY	19800		
10	Stabilized Access Road & Laydown Area (Furnish/Install and Remove)	SY	4750		
11	ADA Ramp (Furnish/Install, Complete in Place)	EA	30		
12	3441.4003 Furnish/Install Alum Sign Ground Mount City Std.	EA	12		
13	4" SLD Pvmt Marking HAS (W)	LF	10000		
14	Parking Lot Legend Handicap	EA	12		
15	Precast Concrete Wheelstops (Furnish/Install, Complete in Place)	EA	12		
16	Erosion and Sediment Control Devices (Furnish/Install and Remove)	LS	1		
17	3341.0301 30" HDPE Pipe	LF	190		
18	3349.5001 10' Curb Inlet	EA	2		
19	3349.1005 30" Flared Headwall, 1 pipe	EA	1		
20	3137.0104 Medium Stone Riprap, dry	SY	30		
21	Light Pole Assemblies (Furnish/Install, Complete in Place)	EA	38		
22	Light Pole Foundations (Furnish/Install, Complete in Place)	EA	38		
23	Lighting Pull Boxes (Furnish/Install, Complete in Place)	EA	8		
24	Lighting Conduit & Cable (Furnish/Install, Complete in Place)	LS	1		
25	Security System (Furnish/Install, Complete in Place)	LS	1		
26	Irrigation System (Furnish/Install, Complete in Place)	LS	1		
27	Landscaping & Plantings (Furnish/Install, Complete in Place)	LS	1		
28	Mobilization (3%)	LS	1		
29	Insurance	LS	1		
30	Bonds	LS	1		
31	General Conditions (5%)	LS	1		
<b>Total - Unit 1: Parking Lot</b>					

"General Decision Number: TX20230025 01/06/2023

Superseded General Decision Number: TX20220025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.</li> </ul>
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number      Publication Date

0

01/06/2023

SUTX2011-007 08/03/2011

	Rates	Fringes
CONCRETE FINISHER (Paving and Structures).....	\$ 14.12	**
ELECTRICIAN.....	\$ 19.80	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 13.16	**
Structures.....	\$ 13.84	**
LABORER		
Asphalt Raker.....	\$ 12.69	**
Flagger.....	\$ 10.06	**
Laborer, Common.....	\$ 10.72	**
Laborer, Utility.....	\$ 12.32	**
Pipelayer.....	\$ 13.24	**
Work Zone Barricade Servicer.....	\$ 11.68	**
POWER EQUIPMENT OPERATOR:		
Asphalt Distributor.....	\$ 15.32	**
Asphalt Paving Machine.....	\$ 13.99	**
Broom or Sweeper.....	\$ 11.74	**
Concrete Pavement Finishing Machine.....	\$ 16.05	**
Concrete Saw.....	\$ 14.48	**
Crane Operator, Lattice Boom 80 Tons or Less.....	\$ 17.27	
Crane Operator, Lattice Boom over 80 Tons.....	\$ 20.52	
Crane, Hydraulic 80 Tons or Less.....	\$ 18.12	
Crawler Tractor.....	\$ 14.07	**
Excavator, 50,000 pounds or less.....	\$ 17.19	
Excavator, over 50,000 pounds.....	\$ 16.99	
Foundation Drill , Truck Mounted.....	\$ 21.07	
Foundation Drill, Crawler Mounted.....	\$ 17.99	
Front End Loader 3 CY or Less.....	\$ 13.69	**
Front End Loader, over 3 CY.....	\$ 14.72	**
Loader/Backhoe.....	\$ 15.18	**
Mechanic.....	\$ 17.68	
Milling Machine.....	\$ 14.32	**
Motor Grader, Fine Grade....	\$ 17.19	
Motor Grader, Rough.....	\$ 16.02	**
Pavement Marking Machine....	\$ 13.63	**
Reclaimer/Pulverizer.....	\$ 11.01	**
Roller, Asphalt.....	\$ 13.08	**
Roller, Other.....	\$ 11.51	**
Scraper.....	\$ 12.96	**
Small Slipform Machine.....	\$ 15.96	**
Spreader Box.....	\$ 14.73	**
Servicer.....	\$ 14.58	**
Steel Worker (Reinforcing).....	\$ 16.18	**
TRUCK DRIVER		
Lowboy-Float.....	\$ 16.24	



Off Road Hauler.....\$ 12.25 \*\*  
 Single Axle.....\$ 12.31 \*\*  
 Single or Tandem Axle Dump  
 Truck.....\$ 12.62 \*\*  
 Tandem Axle Tractor with  
 Semi Trailer.....\$ 12.86 \*\*  
 Transit-Mix.....\$ 14.14 \*\*

WELDER.....\$ 14.84 \*\*

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 WELDERS - Receive rate prescribed for craft performing  
 operation to which welding is incidental.

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 \*\* Workers in this classification may be entitled to a higher  
 minimum wage under Executive Order 14026 (\$16.20) or 13658  
 (\$12.15). Please see the Note at the top of the wage  
 determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave  
 for Federal Contractors applies to all contracts subject to the  
 Davis-Bacon Act for which the contract is awarded (and any  
 solicitation was issued) on or after January 1, 2017. If this  
 contract is covered by the EO, the contractor must provide  
 employees with 1 hour of paid sick leave for every 30 hours  
 they work, up to 56 hours of paid sick leave each year.  
 Employees must be permitted to use paid sick leave for their  
 own illness, injury or other health-related needs, including  
 preventive care; to assist a family member (or person who is  
 like family to the employee) who is ill, injured, or has other  
 health-related needs, including preventive care; or for reasons  
 resulting from, or to assist a family member (or person who is  
 like family to the employee) who is a victim of, domestic  
 violence, sexual assault, or stalking. Additional information  
 on contractor requirements and worker protections under the EO  
 is available at  
<https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within  
 the scope of the classifications listed may be added after  
 award only as provided in the labor standards contract clauses  
 (29CFR 5.5 (a) (1) (ii)).

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 The body of each wage determination lists the classification  
 and wage rates that have been found to be prevailing for the  
 cited type(s) of construction in the area covered by the wage  
 determination. The classifications are listed in alphabetical  
 order of ""identifiers"" that indicate whether the particular  
 rate is a union rate (current union negotiated rate for local),  
 a survey rate (weighted average rate) or a union average rate  
 (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed  
 in dotted lines beginning with characters other than ""SU"" or  
 ""UAVG"" denotes that the union classification and rate were  
 prevailing for that classification in the survey. Example:  
 PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of  
 the union which prevailed in the survey for this  
 classification, which in this example would be Plumbers. 0198  
 indicates the local union number or district council number

where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"