



**VALLEY METRO
SUBMITTAL OFFER AND AWARD FORM**

**SOLICITATION INFORMATION
Request for Qualifications (RFQu)**

1. SOLICITATION NO: 2024-RFQu-020		4. BRIEF DESCRIPTION: REQUEST FOR QUALIFICATIONS No. RFQ No. 2024-RFQu-020 CAPITOL EXTENSION - PUBLIC ART
2. ISSUE DATE: Wednesday, May 1, 2024		
3. FOR INFORMATION CONTACT: NAME: Edwin V. Nyberg, CPPB Sr. Contracts Administrator E-MAIL: procurement@valleymetro.org		
5. PRE-SUBMITTAL CONFERENCE LOCATION: N/A		DATE: N/A TIME:

6. SUBMIT OFFER TO: CaFE Submissions will be accepted via CaFE at: https://artist.callforentry.org/festivals_unique_info.php?ID=13449	7. OFFER SUBMISSION DUE DATE AND TIME: DATE: Wednesday, June 5, 2024 TIME: 12:59 P.M. MST
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8. **SUBMIT WITH OFFER:** **See page 2, block 22**

9. Offers submitted in response to an RFQu will not be publicly opened.

10. **FIRM OFFER PERIOD:** Offers submitted shall remain firm for a period of 180 calendar days from the date specified in Block 7.

11. This solicitation and any resulting contract, respectively, consist of this Valley Metro form and the exhibits and documents designated with a symbol ● on Page 2 of this form.

OFFER
(To be completed by Offeror)

CAUTION: A false statement in any offer (bid or proposal) submitted to Valley Metro may be a criminal offense in violation of Arizona Revised Statute ARS 13-2407.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within the period specified in Block 10, above, to furnish any or all items, or provide the service(s), upon which prices are negotiated at a later date, and to deliver the item(s) and or perform the service(s) at the designated location(s) within the time specified.

13. OFFEROR'S NAME & ADDRESS: (Type or Print)	14. NAME & TITLE OF PERSON AUTHORIZED TO SIGN THE OFFER: (Type or Print)
TELEPHONE: _____ E-MAIL: _____ CELL PHONE: _____ FAX: _____	15. OFFEROR'S SIGNATURE & DATE:

AWARD
(To be completed by Valley Metro)

16. **DBE:** The DBE participation for this contract is as follows based on: Percentage of the total contract amount % _____ or Other (i.e. race neutral clause or N/A) _____

17. TERM OF CONTRACT 5 Years or until complete	18. EFFECTIVE DATE	19. CONTRACT NUMBER:
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20. **CHIEF EXECUTIVE OFFICER SIGNATURE & DATE OF AWARD:**
VALLEY METRO RAIL, INC.
Name: **Jessica Mefford-Miller** Signature: _____ Date: ____/____/____

**SUBMITTAL OFFER AND AWARD FORM
2024-RFQu-020 – CAPITOL EXTENSION - PUBLIC ART EXTENSION PROJECT**

☞ See Exhibit B for Offer preparation and submission instructions.

21. CONTENTS:

	NAME	FORM DESCRIPTION	SUBMIT WITH OFFER?
●		Solicitation Offer and Award Form (Also provide on electronic media)	X
●	Exhibit A	Scope of Services	
●	Exhibit A1	Reserved	
●	Exhibit A2	Maintenance and Materials Requirements	
●	Exhibit A3	Payment Schedule and Design Fabrication Deliverable Schedule Dates	
●	Exhibit B	Solicitation Instructions and Conditions	
●	Exhibit C	Special Terms and Conditions	
●	Exhibit D	General Terms and Conditions	
●	Exhibit E	Reserved	
●	Attachment F	Reserved	
●	Attachment G	Reserved	
●	Attachment H	Insurance Requirements	
●	Attachment I	Reserved	
●	Attachment J	Reserved	
●	Attachment K	Reserved	

22. SUBMIT THE BELOW ITEM(S) WITH OFFER, IN ADDITION TO THE ABOVE IDENTIFIED SUBMITTALS:

DESCRIPTION		
●	Letter from Submitter's insurance agent indicating Submitter has ability to obtain insurance requirements as identified in the RFQu.	X

23. ACKNOWLEDGMENT OF ADDENDA:	Addendum No.	Date	Addendum No.	Date
Offeror acknowledges receipt of the following Addenda to the solicitation: (Identify Addendum number and date of each.)				

VALLEY METRO RAIL, INC.



CAPITOL EXTENSION - PUBLIC ART

REQUEST FOR QUALIFICATIONS RFQ

No. 2024-RFQu-020

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT A - SCOPE OF WORK

1. SCOPE OF SERVICES DESIGN AND FABRICATION

Collaboration is a key element in this art program. Artists will be required to do extensive outreach to stakeholders and local groups in order to create signature works of art which reflect the unique character and spirit of the surrounding community. Artists will also work with Valley Metro and City staff, design Contractors and engineers to develop artwork. Artwork should be thoughtful and engaging while maintaining strict standards of safety, maintenance, and operations. Artwork may be stand-alone as well as integrated.

The following nine commissions are planned for the Capitol Extension:

7th Ave/Washington Station Platform	\$275,000
7th Ave/Jefferson Station Platform	\$275,000
15th Ave/Washington Station Platform	\$275,000
15th Ave/Jefferson Station Platform	\$275,000
7th Ave/Jefferson TPSS	\$50,000
15th Ave/Jefferson Operator Facility	\$25,000
3rd Ave/Washington Railing	\$40,000
3rd Ave/Jefferson Railing	\$40,000
7th Ave/Jefferson Railing	\$40,000

The Artist, after contract award, will conduct research and undertake neighborhood assessments, including meeting with stakeholders and community groups, to develop the design for their facility’s artwork project. The submitted design will be reviewed by the Agency for technical and aesthetic criteria and by stakeholder and the Regional Rail Arts Committees (RRAC) and by City staff for aesthetic consideration. In addition, designs will be presented to various City and Agency boards and committees. After acceptance and notification, the Artist is authorized to work with Valley Metro’s assigned staff to integrate the artwork design into the section’s overall plan. The Artist will be responsible for all elements of the design, fabrication and installation of his/her artwork unless otherwise noted. The Artist shall be paid a design fee and fabrication fee.

An artist fee of fifteen percent (15%), of the approved location’s art budget, will be paid for the accepted concept and final design development. The Artist should invoice upon acceptance of deliverables at thirty percent (30%), sixty percent (60%) and at one hundred percent (100%) of design completion. At one hundred percent (100%) completion the Artist shall submit the final design proposal for fabrication and installation. Should the design not be accepted by the RRAC and the public, the artist must submit a replacement design for approval. If the

replacement design is unacceptable, subsequent designs may be requested. If the subsequent designs are determined to be unacceptable, Valley Metro reserves the right to terminate the contract for convenience.

The remaining eighty-five percent (85%) of the approved budget is reserved for Fabrication and Installation and will be paid according to the approved payment schedule submitted at one hundred percent (100%) design.

Design Tasks

Artist shall adhere to the following design tasks:

- Conduct research on urban context, neighborhood fabric, etc.; attend community meetings and meet with stakeholders.
- Collaborate with Design Contractor and Contractor to integrate the artwork into the ~~steps~~ stations or other identified transit areas.
- Provide images and texts for presentation purposes to Valley Metro, community, and RRAC. Provide designs in the original software format and/or agreed upon format suitable for electronic presentation
- Insure project elements comply structurally, functionally, and technically with related federal and state laws, local codes and Valley Metro’s established design standards.
- Insure project elements comply with all safety, maintenance and operations requirements for Valley Metro, including the Design Criteria Manual.
- Provide documentation to support how project elements will be fabricated. Documentation shall be incorporated into the plan specifications.
- Provide project element budget
- Help develop and edit construction specifications for incorporation into documents for art elements and other related elements as necessary.

Design Deliverables

1. General Orientation (10% Design Payment)

Participate, in-person, in a General Orientation which will include:

- Valley Metro/alignment orientation meetings
- Participation in two “meet and greet” meetings, one with the selection panel and one with the public.

2. 30% - Conceptual Design (30% Design Payment)

Provide conceptual design ideas for presentation as a PowerPoint including one page description to Agency for technical review (safety, security, constructability, operations, and maintenance issues). Description should include general size, anticipated materials and lighting ideas. Images must be submitted in a jpeg, pdf, or other acceptable format. Artist will present 30% design at:

- RRAC/SARC meeting
- Public meeting
- Additional meetings may be required if initial designs are not approved.

3. 60% - Technical Design (60%Design Payment)

Provide Draft of Technical Design Materials at approximately 60% of design and include materials, dimensions, preliminary engineering, and information to enable foundation design by Agency, lighting design if applicable and preliminary cost estimate and budget. Submittal shall also include a Power Point presentation, images in jpeg, pdf or other acceptable format and updated one-page description.

Contractor will present 60% design at:

- RRAC/SARC meeting;
- Public meeting

4. 100% - Final Design (100% Design Payment)

Provide Final Design Proposal for Fabrication and Installation at approximately 100% of design. Files will be submitted in separate (one per bullet point) Word or PDF format:

- Final written narrative explaining project design themes, ideas, and background influences;
- Art Plan that includes dimensions, materials, location of project(s) on station or facility maps and integration of artwork with station finishes (e.g. grounding, electrical, foundation/attachment, etc.);
- Project design sketches and working drawings, photographs and/or maquettes as appropriate and suitable for use in publications;
- Proposed maintenance plan;
- Safety and Security Checklist completed and signed;
- Provide necessary Arizona-sealed engineered drawings for all projects including but not limited to suspended artwork or artwork over 5' in height. Final drawings will include an Arizona-licensed engineer's stamp, and notes for all required inspections and certifications;
- Detailed scope of work for Fabrication and Installation including detailed Budget, and Fabrication Plan;
- Deliverables-driven payment schedule; and
- Participation in a final RRAC/SARC and or public presentation meeting if necessary

Fabrication and Installation

Upon successful completion of the design and acceptance of estimated costs for fabrication and installation, the Artist shall be issued a separate Notice to Proceed with the Fabrication and Installation phase. During this phase, the Artist will begin implementation of the fabrication and installation of the project artwork.

Fabrication and Installation Deliverables

- Submit the completed Design and working (shop) drawings.
- Fabricate artwork in accordance with the Artist's accepted final design proposal and payment schedule.
- Submit Maintenance and Materials requirements for review (Exhibit A2 is included as a sample).
- Upon acceptance of Maintenance and Materials requirements and when directed, deliver and install artwork in good condition in accordance with specifications.
- The Artist shall provide an approved installation plan detailing all machines, manpower, engineered framework, pick plans, required lane closures, duration, etc., forty (40) days prior to installation.

- The Artist shall install artwork according to the Contractor’s construction schedule.
- The Artist shall leave artwork and site in good condition when installation is complete.
- If, due to no fault of the Artist, storage becomes necessary past the agreed upon date of delivery, reasonable accommodations will be made.

2. TERMS OF SERVICE

The Artist shall perform all Artistic Services, including participation in required meetings, and furnish all supplies, material and equipment as necessary for the design, execution, fabrication and installation of the Work, including without limitation payment for all necessary, taxes, insurance, permits, inspections, supplies, materials, tools, equipment, Contractors, and all other items incidental to producing a complete and acceptable Work, and shall, either directly or through qualified subcontractors, undertake the transportation and installation of the Work at the Site.

The Work includes all physical components of the complete artwork including but not limited to associated foundations, bases, mounting brackets or fastening devices, specialty lighting, and all other miscellaneous components necessary to complete the fabrication, installation and display of the artwork.

Access and Oversight

The Artist shall provide the Agency with access to the Work during reasonable business hours, as requested in writing five (5) days prior to visit, or by mutual consent, to review the Work and progress in completing the Work.

The Agency shall have the authority for supervising the requirements of the scope of this Agreement. The Artist may discuss the Work or its requirements with the various departments of the Agency or within the project; however, the Agency must give any specific interpretations to the Artist or approve of the Artist’s requests.

Coordination and Integration

Coordination The Artist understands and agrees that he/she will not have exclusive or unrestricted access to the Site where the Work is to be installed. The Artist shall be responsible for coordinating his/her schedule and activities with the CM@Risk Contractor and other contractors working on the Site.

Integration In the event the Work is integrated into, combined, or otherwise coordinated with services by the CM@Risk Contractor not selected by and not within the control of the Artist, the Artist shall not be responsible for such services. If any part of the Artist’s work depends for proper execution or results upon the work of the Agency or the CM@Risk Contractor, the Artist shall, prior to proceeding with the work, promptly report to the Agency any apparent discrepancies or other defects in such work that render it unsuitable for proper execution and results. The Artist shall not be responsible for any liability or failure to fulfill his/her obligations not attributed to reported discrepancies or defects. Failure of the Artist to report a discrepancy or defect shall constitute acceptance of Agency’s or CM@Risk Contractor’s work as fit and proper to receive the Artist’s work. Any costs caused by defective or ill-timed work shall be borne by the party responsible for them. Nothing in this Paragraph shall limit the responsibility of the Artist to take all necessary steps to coordinate his/her work with the work of Agency or CM@Risk Contractor on the project.

Delivery and Installation:

The Artist is responsible for the cost, transportation and installation of any structural support, footing or base required for the Work, unless otherwise agreed to in writing by the Agency. Below ground foundation shall be provided by the contractor.

The Work shall not be delivered or installed until the Artist has received written approval from the Agency that the Work has been completed according to the approved design and that specific installation plans submitted by the Artist have been approved by the Agency.

Arrangements for access for installation must be made through Valley Metro. Access to the Site may need to be scheduled to avoid interference with passenger flow, client use, or construction activities. The Artist shall provide Valley Metro with a written list of the workers, vehicles and equipment and necessary power that will be involved in the installation of the Work at least thirty (30) days before delivery and installation so that any necessary permits can be issued and security and unloading arrangements can be made. Anyone scheduled to work on site must adhere to Project contractor's safety requirements, including safety training. Cost for vehicle parking shall be the responsibility of the Artist.

If the Agency so elects, it may specify the manner, in which the Work shall be delivered, provided, that the specified method of delivery shall not increase the normal and ordinary cost of delivery of the Work.

Following delivery of the Work, the Artist shall install the Work at the Site in such a manner as Valley Metro shall approve and submit all required documentation and information. The Artist shall be responsible for all expenses including permits, special inspections materials, labor and equipment for the preparation of the Site and installation of the Work, unless otherwise agreed upon by Valley Metro.

The Artist shall limit construction operations in connection with the delivery and installation of the Work to the Site, unless otherwise approved by the Agency. The Artist shall perform no such construction operations of any nature on, over or across other property unless the operations are specifically authorized in the approved plans or specifications, or specifically authorized by the Agency.

The Artist shall take reasonable actions to protect adjoining property and nearby buildings, public streets or roads from unreasonable dust, dirt, rubbish or other nuisance arising out of the Artist's operations or storage practices.

At all times while the Work is being installed, the Artist shall keep the site clean and free of dust, construction debris, and trash. Directly upon completion of the Work, the Artist shall remove from the Site all of the Artist's equipment, tools, materials, and any waste in preparation for the Agency's final inspection. However, nothing in this paragraph shall obligate the Artist to clean trash, dust, dirt, or other debris from the Site if such items have not been caused by Artist's work at the Site.

Installation and workers' safety shall be in conformance with the latest Arizona health and safety regulations, fire regulations and safety procedure applicable to construction of the Project.

The Artist shall notify the Agency in writing when the Work is installed and all services have been fully completed to secure final approval and acceptance by the Agency.

Post-Installation

The Work shall remain in the exclusive possession and control of the Artist, and all risk of destruction or damage to the Work or any part thereof, from any cause whatsoever shall be borne by the Artist, until all Work is satisfactorily installed at the Site and accepted by the Agency. However, the Artist shall not be responsible for either repairing or paying for the repair of any damage caused by the Project contractors or subcontractors not under the Artist's contractual control or supervision.

The Artist shall provide information on the Work requested by the Agency for its registration files, including, but not limited to, updated biographical information, a statement regarding the Work, copyright registration information, technical and maintenance information, and a list of products, chemicals, and finishes used during fabrication to insure appropriate maintenance and repair or replacement of Work if the Artist cannot be contacted.

-- End --

EXHIBIT A2 – MAINTENANCE & MATERIALS REQUIREMENTS
(To be used after award – Fabrication and Installation Deliverables)

1. GENERAL INFORMATION

Artist

Title of Work

Location

General Description

2. ARTWORK INFORMATION (in-depth information for overall project and for each individual element)

Medium and Description of Materials (include materials thickness, welding rod alloy or joint material, casting alloy, wax body, glass or fiber type) paint color and data sheet

Special Methods Utilized in Execution of Artwork (welding or joint method, technique or construction method – attach fabrication drawings)

Material Finish (glaze, paint color and type with product data sheet, sanding grit, tool pattern, patina, surface sealer specifications) Installation Method(s) (foundation installation structure, bolt/pin/fastener size and material, grout data sheet)

Placement of artwork (cautions regarding sunlight, heat, exhaust, (cyclones, flying sharks...etc.)

3. VENDOR/PARTS/STORAGE

Include supplier's name, address, email address and phone number, description for all components of project, attach copies of manufacturer specifications whenever possible.

4. REGULAR MAINTENANCE SCHEDULE

Include cleaning agents and recommended cleaning procedure, yearly maintenance schedule for the entire piece and recommended procedure to check any electrical or mechanical parts that are integrated in this Work.

5. SPECIAL CONSIDERATIONS AND/OR ADDITIONAL PERTINENT INFORMATION

-- End --



EXHIBIT A3 – PAYMENT SCHEDULE AND DESIGN AND FABRICATION DELIVERABLE SCHEDULE DATES

Capitol Extension SAMPLE Station Budget \$275,000 ARTIST

Payment Schedule for Design Phase -15% of contract budget - \$41,250

Final Design Deliverables Schedule:

For each design milestone, there will be approximately one month between the original submittal of design drawings to the VALLEY METRO public art administrator through to the public meeting and incorporation of artist drawings into the design plan set. Artist may invoice after the public meeting or at the completion of his/her collaboration with architects to include drawings into the design set, whichever comes last.

Date	Milestone	% fee	\$ amount
September 9-13, 2024	Artist Orientation	10%	\$4,125
October 15, 2024	30% Design	30%	\$12,375
February 11, 2025	60% Design	30%	\$12,375
June 11, 2025	100% Final Design	30%	\$12,375

All dates are subject to change. Final Design payments are contingent upon Federal approval of Capitol Extension Preliminary Engineering.

Design Deliverable Schedule Dates for Final Design

September 9-13, 2024 Artist Orientation
 September 9-13, 2024.....Public Meeting/Design Workshops
 October 15, 2024 30% Design Submittal
 October 22-24, 2024 30% RRAC Review/Public Meeting (Public Meeting may be scheduled at a later date)
 February 11, 2025.....60% Design Submittal – including engineering
 February 17-21, 2025 60% RRAC Review/Public Meeting (Public Meeting may be scheduled at a later date)
 June 11, 2025..... 100% Design Submittal

Fabrication and Installation Phase – 85% of contract budget - \$233,750

Payment Schedule to be determined at 100% Final Design and amended to contract.

-- End --



REQUEST FOR QUALIFICATIONS

RFQ No. 2024-RFQu-020

CAPITOL EXTENSION - PUBLIC ART SERVICES

DUE DATE: Wednesday, June 5, 2024

11:59 P.M. MST

Issue Date: Wednesday, May 1, 2024



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1. INTRODUCTION

Valley Metro Rail, Inc. (VMR) hereinafter referred to as "Valley Metro", is seeking to hire up to 9 Public Artists for the Light Rail Transit (LRT) Capitol Extension.

In 2002, Valley Metro Rail Inc., a nonprofit, public corporation was formed and charged with the design, construction, and operation of the region's 66-mile high-capacity transit system. Valley Metro Rail Board member cities include Phoenix, Tempe, Mesa, Glendale and Chandler. This Board establishes overall policies and provides general oversight of the agency and its responsibilities. - See more at: www.valleymetro.org

This Request for Qualifications (RFQu) contains information necessary to prepare and submit Statements of Qualifications (SOQs). Offerors are advised to completely review and follow the instructions in this RFQu regarding the delivery of Submittals. Failure to provide all required and requested information may cause the Submittal to be rejected. Further, Valley Metro reserves the right to waive minor irregularities in Submittals, reject any or all Proposals, or cancel and re-solicit this RFQu.

Offerors are cautioned to read the entire RFQu, noting insurance and submittal requirements, and to complete all required forms enclosed. Failure to provide all requested information may cause the offer to be rejected. Valley Metro reserves the right to waive minor irregularities in submittals and to reject all offers and re-solicit or cancel this RFQu.

2. AGENCY BACKGROUND

Valley Metro is the regional public transportation agency providing eco-friendly, coordinated, multi-model transit options to residents of greater Phoenix and Maricopa County. With a core mission of advancing a total transit network, Valley Metro plans, develops and operates the regional bus and light rail systems and alternative transportation programs for commuters, seniors and people with disabilities, commuter vanpools, online carpool matching, bus trip mapping, bicycle safety and telework assistance.

Valley Metro is governed by two Boards of Directors. The Regional Public Transportation Authority (RPTA) Board consists of 19 public agencies (18 cities and Maricopa County) that set the policy direction for all modes of transit except light rail. The Valley Metro Rail Board consists of five cities that set the policy direction for light rail high-capacity transit. The Boards and Valley Metro work to improve and regionalize the public transit system.

Recognizing the value that public art brings to the built environment, Valley Metro desires to insure the integration of public art into the light rail system. This art program for the Capitol Extension is funded by Public Transportation Funds provided by the citizens of Phoenix. The goal of the Valley Metro Art Program is to humanize the built environment, enhance the sense of place, and contribute to the expression of community values.

The Capitol Extension consists of four LRT station platforms stops and .7 miles of light rail trackway from downtown Phoenix to the Arizona State Capitol.

3. DEFINITIONS

Throughout this RFQu, the following definitions shall apply.

"Affiliate" – A branch or unit of a larger organization and a company effectively controlled by another or associated with others under common ownership or control.

“Agency” – Valley Metro Rail, Inc. 101 N. 1st Avenue, Suite 1400, Phoenix, AZ 85003, acting by and through its authorized representatives. Also known as Valley Metro.

“Award” – Notification of acceptance by the AGENCY of a Proposal Submitted by a Bidder or Offeror for award of a contract.

“Best and Final Offer” (BAFO) - A term used in solicitations for a proposal containing final pricing and deliverables, based on the outcome of the negotiations conducted during the initial evaluation stage of the procurement, and a determination by the Contract Administrator that negotiations are completed.

“Contract” – The term “Contract” means the written agreement between the parties inclusive of any attachments and any Change Orders issued thereto.

“Contract Documents” – The term “Contract Documents” means, all documents as presented in this Request for Qualifications, Special and General Terms and Conditions, and all attachments (e.g. Price Schedule, other required Attachments, etc.), and any Change Orders issued thereto.

“CM@Risk Contractor” – The Contractor that is awarded the construction Work for the Capitol Extension project.

“Design Contractor” – Design professionals, who are properly licensed in the State of Arizona, are under contract with the Agency and who delivers engineering and design services including design services during construction for the Project.

“Discussion” – Formal or informal communication involving an oral or written exchange of information for the primary purpose of obtaining information essential for determining the acceptability of a proposal. To provide the Offeror an opportunity to revise its proposal.

“FTA” – The Federal Transit Administration, United States Department of Transportation, formerly known as the Urban Mass Transportation Administration.

“Indemnified Group” – Valley Metro Rail, Inc., the Cities and municipalities that are Members of the Valley Metro Board, Regional Public Transportation Authority, its cities and municipalities, and their respective Contractors, representatives, officers, directors, employees.

“Joint Venture” – A legal association of entities formed for the purpose of proposing on the RFQu and executing the Contract as a single business entity.

“LRT” – Light Rail Transit

“Members” – Cities and municipalities that are Members of the Valley Metro Boards

“Offeror” – The individual, firm, partnership, corporation, joint venture or other entity, which submits a Submittal to Valley Metro, in response to this RFQu, seeking to be selected as the Artist.

“RFQu” – This Request for Qualifications.

“RPTA” – Regional Public Transportation Authority, also known as Valley Metro.

“Submittal” – A statement of qualifications in response to this RFQu, by an Offeror for the Work, properly signed, dated and completed and as may be amended or modified by a Best and Final Offer (BAFO).

“Valley Metro” – the joint combination of Valley Metro Rail, Inc. and Regional Public Transportation Authority. The brand name for the Valley’s regional transportation system.

“Valley Metro Rail, Inc.” – The organization charged with the design, construction and operation of the Valley’s light rail system, also known as Valley Metro.

“Work” – The term “Work” means the furnishing of all of the supervision, labor, material, equipment, services, and incidentals necessary to perform the Contract. The term “Services” may be used interchangeably.

4. NOTICE TO OFFERORS

Valley Metro is seeking up to nine qualified Artists for nine projects on the Capitol Extension. Projects will be divided into two categories; 1) four larger budget, more complex projects for artists with considerable past public art experience including a minimum, approximately \$40,000, public art budget; and 2) five smaller budget, smaller scope projects for emerging artists with limited public art experience.

5. PROJECT INTRODUCTION

The Capitol Extension project is a .7-mile western extension of the existing Valley Metro light rail transit (LRT) line from downtown Phoenix to the Arizona State Capitol. The Capitol Extension is scheduled to begin operations in 2029.

The new alignment shall include art projects at two, split platform stations (4 total platforms) along the route: 1) at 7th Avenue, on Washington and Jefferson streets, 2) at 15th Avenue on Washington and Jefferson streets and one new traction power substation, (TPSS). In addition, art is planned at one operator facility and several areas of sidewalk railing. Communication, coordination, and connection with the diverse communities along the alignment will be key to a successful art program for this extension.

Artists awarded a contract for the Capitol Extension will coordinate with area residents and stakeholders, the Design Contractors, Valley Metro and City of Phoenix staff, and the Regional Rail Arts Committee (RRAC) to enhance the overall design of stops and transit elements along the Project.

Artwork designed at these sites should be thoughtful, engaging and reflect the character of the surrounding community while maintaining strict standards of safety, maintenance, and operations. Artwork may be stand-alone as well as integrated.

The detailed Scope of Services is in Exhibit A. The Artists will be expected to possess thorough knowledge, expertise, skills, and experience necessary to deliver the services/materials requested.

6. APPROXIMATE BUDGET INFORMATION

The approximate budgets are “Lump Sum”, meaning they include ALL costs (i.e., artist fees, travel, insurance, shipping, engineering, fabrication and installation, administrative expenses related to the project, taxes, contractor’s licenses, inspections, etc.)



The experienced artist art commissions and budgets are as follows:

7th Ave/Washington Station Platform	\$275,000
7th Ave/Jefferson Station Platform	\$275,000
15th Ave/Washington Station Platform	\$275,000
15th Ave/Jefferson Station Platform	\$275,000

The emerging artist art commissions and budgets are as follows:

7th Ave/Jefferson TPSS	\$50,000
15th Ave/Jefferson Operator Facility	\$25,000
3rd Ave/Washington Railing	\$40,000
3rd Ave/Jefferson Railing	\$40,000
7th Ave/Jefferson Railing	\$40,000

7. SUBMITTAL VALIDITY

All Submittals received in response to this RFQu shall be valid for a minimum term of one hundred eighty (180) calendar days from the Offer Due Date (hereinafter referred to as the “Submittal Term”).

8. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS

Valley Metro is committed to socially and economically disadvantaged, minority, women and small businesses participating in contracting opportunities. Valley Metro extends to everyone, firm, vendor, supplier, Submitter, and subcontractor an equal economic opportunity to compete for Agencies business and strongly encourages voluntary use of disadvantaged and/or minority-or women-owned businesses to reflect both the industry and community ethnic composition.

9. TAXES

Unless otherwise provided in the Contract Documents, the Price is deemed to include all sales, use, consumer, gross receipts and other taxes mandated by applicable federal, state, and local laws and regulations.

10. SCHEDULE OF EVENTS

Public Notice Issued/Advertise	Thursday, May 2, 2024
RFQu Release Date	Wednesday, May 1, 2024
Last Date for Questions/Inquiries	Monday, May 20, 2024
Final Addendum	Wednesday, May 22, 2024



Submittals Due Date		Wednesday, June 5, 2024
Preliminary Selection Notice		Wednesday, July 17, 2024
Board Approval/Contract Award		Thursday, August 22, 2024
Notice to Proceed	(Prerequisite - all required documentation and paperwork completed and returned)	Tuesday, August 29, 2024

11. AVAILABILITY OF RFQu DOCUMENTS

A. Submissions will be accepted only via CaFE at:

https://artist.callforentry.org/festivals_unique_info.php?ID=13449

B. Do not mail or email submissions or original artwork. Applicants are strongly encouraged to retain a complete copy of their submission for their records.

12. COMMUNICATIONS AND REQUESTS FOR CLARIFICATIONS

A. All correspondence, communications, and/or contacts regarding this RFQu shall be in writing and submitted via CaFE at:

https://artist.callforentry.org/festivals_unique_info.php?ID=13449

or to:

Edwin Nyberg, Senior Contracts Administrator
Valley Metro Rail, Inc.
101 N. 1st Avenue, Suite 1400
Phoenix, AZ 85003
enyberg@valleymetro.org

B. If an Offeror determines at any time that the Work or any matter relating thereto is not sufficiently described or explained in the RFQu, or that any conflict or discrepancy exists between portions thereof or with any federal, state or local law, ordinance, rule, regulation or other standard or requirement, the Offeror shall submit a written request for clarification to the AGENCY.

C. Written questions must be submitted via CaFE at:

https://artist.callforentry.org/festivals_unique_info.php?ID=13449

or to:

Edwin Nyberg, Senior Contracts Administrator
Valley Metro Rail, Inc.
101 N. 1st Avenue, Suite 1400
Phoenix, AZ 85003
enyberg@valleymetro.org

the last date for inquiries identified in RFQu Schedule of Events, or **5:00 P.M. MST on Monday May 20, 2024.**



- D. Communications with the AGENCY officials and/or staff other than those listed above may disqualify the Offeror involved.

13. ADDENDA TO SOLICITATION

In the event that it becomes necessary to revise any part of this RFQu, a written addendum will be issued via CaFE at:

https://artist.callforentry.org/festivals_unique_info.php?ID=13449

Valley Metro reserves the right to amend this RFQu at any time. Any revisions to, or interpretations of, the RFQu shall be described by written addenda.

14. RFQu AS EXCLUSIVE BASIS FOR SUBMITTALS

This RFQu represents the most comprehensive and definitive statement Valley Metro is able to make as to the requirements and terms and conditions for this procurement and the performance of the Work. This RFQu and any subsequent written addenda shall serve as the sole basis upon which Offerors may submit Statements of Qualifications. Any information or understanding, verbal or written, which is not contained either in this RFQu or in subsequent written addenda to this RFQu, shall not be considered by the Offeror in submitting its Statement of Qualifications

15. SOQ DELIVERY, DUE DATE AND TIME

- A. **The deadline for submission of SOQs is Wednesday, June 5, 2024 by 11:59 P.M. MST** (hereinafter referred to as the “Offer Due Date”).

- B. Offerors responding to this RFQu must submit via CaFE at:

https://artist.callforentry.org/festivals_unique_info.php?ID=13449

- C. Proposals submitted outside of the AGENCY’s CaFE website or those that are received after the offer due date and time shall be rejected.

16. MODIFICATION OF SUBMITTAL

The AGENCY reserves the right to waive any minor insufficiencies or non-material irregularities in any SOQ submitted in response to this RFQu solely at its discretion. Further, the Agency reserves the right to allow Submitter to correct minor insufficiencies or non-material irregularities in Submittals solely at its discretion.

17. SUBMITTAL FORMAT AND PREPARATION INSTRUCTIONS

- A. Submission Requirements

- A submittal by an individual or sole proprietorship shall be signed by the individual or sole proprietor. A submittal by a partnership shall be executed in the partnership name and signed by all partners. A submittal by a corporation shall be executed in the corporate name by the president or vice-president (or other corporate officer accompanied by the evidence of authority of sign). A submittal by a joint venture shall list the names of all joint venture members and shall

be executed by all joint venture members. All names and applicable titles shall be typed and printed below the signatures

B. Submittal Content

1 - Letter of Interest that describes: (not to exceed 1 page limit)

- Past approach to other projects,
- Responses to evaluation criteria,
- Reasons for interest in this project, and
- Other pertinent information
- Design Submittals or preliminary ideas will not be considered.

C. Tab 2 - Current Resume (not to exceed 2 pages per artist)

- Current professional resume or curriculum vitae (CV) including artist's name, address, email, and phone number.
- Teams must submit one resume/CV per team member merged into one PDF, DOC, or DOCS file.

D. Tab 3 - Reference List (not to exceed 1 page)

- Offeror shall submit at least three but no more than five references containing the following information:
 - Name of reference.
 - Title and position.
 - Telephone number and email address.

E. Tab 4 - Annotated Image List (not to exceed 2 pages)

- The image list will include a brief description of each image including date, scale, materials, project budget and total cost. Images shall be listed by the number that corresponds to the Image File Name. A thumbnail image by each description is requested though not required.

F. Tab 5 - One set of no more than 10 digital images of completed artwork

- Artists should submit images of past work that best illustrate their qualifications for this project.
- If applying as an Artist team, the team shall submit no more than 10 images.
- Images shall be submitted in a jpg format.
- Follow CaFE guidelines for size.
- Do not put text on your images.
- We recommend using only one photograph per image. Collaging more than one image together may reduce the panelists' ability to see your work clearly.

G. Submittal Requirements, Exceptions and Mandatory Inclusions

- Submittals shall be evaluated based upon the evaluation criteria contained within this RFQu. Offerors shall respond to and provide sufficient information within this section for each evaluation criteria to allow for a thorough evaluation of Offeror's submittal.

H. Required Submittals

- Offerors shall submit the Exhibits and Attachments identified by an X on the Solicitation Offer and Award Form.

18. CONTRACT AWARD SELECTION PROCESS

The selection process will be conducted in a manner providing maximum full and open competition.

Evaluation and Selection Committee

A committee of staff may be called to shortlist the submittals to determine eligibility. The evaluation committee shall determine whether the Offeror should be considered in the large commission category, the small commission category or both based on experience and number, budget and scope of past projects. Submittals will then be evaluated by a selection committee comprised of RRAC members and local stakeholders who will evaluate submittals and electronic media submitted by the Artist to CaFE.

Projects are open to all artists eligible to work in the U.S. however, in the emerging artist/small commission category, local and regional artists may receive some additional consideration.

There will be three separate committees for the nine projects. Committees will arrive at their decisions through verbal discussion and review of the submittals. Submittals will be evaluated in two elimination rounds. The first round will focus on artistic merit and the second round will focus on the combined criteria of artistic merit, outlook, or potential, and experience as presented in the submittals.

If deemed necessary, Valley Metro may invite those Offerors whose Submittals are evaluated and deemed to be in the competitive range for “interviews and discussions” with the selection committees and may be requested to respond to specific questions about their initial Submittal.

19. EVALUATION CRITERIA FOR SELECTION

A. First Round Evaluation Criterion (Maximum 10 Points)

- The following criterion shall be applied in the selection of the artists:
 - Demonstrate artistic merit in conceptual approach and technical execution.

B. Second Round Evaluation Criteria (Maximum 10 Points)

- Demonstrate artistic merit in conceptual approach and technical execution.
- Potential to create an impactful design for this public project. (Work samples should show the potential for you to design an integrated public art concept.)
- Experience in collaborative design work and community engagement. (Collaborative work experience can be described in your Statement of Intent and does not have to be art related.)
- Past projects should demonstrate value commensurate to costs.

20. CONTRACT AWARD

The successful Submittals resulting from this solicitation will be presented for review and recommendation to Valley Metro’s Board of Directors for contract award.

Valley Metro will not be deemed to have accepted a successful Offeror’s Submittal until Valley Metro’s Board of Directors approves the award recommendation, and Valley Metro and the successful Offeror formally execute the



Contract. Work may only be authorized by written Notice to Proceed, or upon Agencies' final determination of scope, schedule, and cost.

21. PROTEST PROCEDURES

Protest Procedures

Interested parties have a right to seek resolution of any concerns, issues, or perceived wrongs associated with this procurement. Upon receipt of a written protest(s), issues of concern will be researched and a written final determination to the protesting party will be issued by the Chief Executive Officer of the Agency. In responding to this RFQu, the Offeror agrees that any legal action in any state or federal court relating to this procurement may not be commenced until the administrative Protest Procedures promulgated by the Agency have been exhausted.

Protests must be made in accordance with the Agency's written protest procedures, which are available from the Contracts Administrator, Valley Metro 101 North 1st Avenue, Suite 1400, Phoenix, Arizona 85003.

Notice of Protest

Protestors shall lodge written protests with the Chief Procurement Officer at Valley 101 North 1st Avenue, Suite 1400, Phoenix, Arizona 85003. Protests must be received by the Agency within the time limits identified below, must contain the name of the protesting party and solicitation/contract number or description of the procurement, and must clearly state the grounds for the protest and the relief sought.

Protest Prior to Offer Due Date & Time

Any interested party who has an objection to a procurement document or process prior to the Submittal Date, shall lodge a protest with the Agency not less than five full (5) working days before the scheduled Submittal Date. All interested parties will be notified that a protest has been filed, and that the Submittal Date may be postponed until further notice.

Protest Prior to Award

All Offerors shall be mailed a copy of the "Notice of Intent to Award" a contract to the successful Offeror. Any interested party who has an objection to the award of a contract for this procurement shall lodge a complaint with the Agency no later than five (5) full working days after the date of the "Notice of Intent to Award". All Offerors will be notified that a protest has been filed. The award of the contract may not be made prior to the resolution of the protest at the sole discretion of the Agency.

Post-Award Protest

Any protestor who has standing may lodge a formal complaint with the Chief Procurement Officer no later than five (5) full working days after the date of contract award. All interested persons shall be notified that a post award protest has been filed.

22. SOLICITATION CONDITIONS AND REQUIREMENTS

Failure to Execute Contract

Contractor's failure to execute the contract, submit proof of insurance, or submit any other items as provided in the contract documents, shall be just cause for cancellation of the award. The Contractor hereby agrees to, and shall reimburse Valley Metro for all damages arising from such failures.

Cost of Proposal Preparation

AGENCY shall not be liable for any pre-contractual expenses incurred by any Offeror. Each Offeror shall hold the AGENCY harmless and free from any and all liability, claims, or expenses incurred by, or on behalf of, any person or organization responding to this RFQu. Pre-contractual expenses are defined as any expenses incurred by Offeror in:

- Preparing a Proposal and related information in response to this RFQu;
- Negotiating with the Agency on any matter related to this RFQu;
- Attending interviews and meetings, traveling and/or making presentations; and
- Accruing other expenses prior to the date of contract award and receipt of a Notice to Proceed.

Limitations

The Agency and Offeror acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the any contract, absent the express written consent by the federal government, the federal government is not a party to any contract resulting from this RFQu and shall not be subject to any obligations or liabilities to the Agency, Consultant or any party (whether or not a party to said contract) in any matter resulting or pertaining to said contract.

Debarred Offerors

The Offeror, including any of its officers or holders of a controlling interest, is obligated to inform the Agency whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should the Offeror be included on such a list during the performance of this project, it shall so inform the Agency.

Prohibited Interest

Without limiting the generality of ARS §38-501 etc. seq., no member, officer, employee of the Agency or member of its governing body during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any resultant contract or the proceeds thereof.

Financial Data

Offerors agree to permit access to financial records for a Pre-Award Audit to verify the accuracy of financial data, should the Agency determine that such an audit is required prior to negotiations or award of contract.

Release of Information

Written approval by the Agency shall be required prior to any public disclosure regarding this RFQu or any subsequent contract award.

Signature

All documents requiring signature shall be signed by an individual(s) authorized to execute legal documents on behalf of the party(ies) represented.

Confidentiality of Information

Proposals will not be publicly opened. Proposals and evaluations will be kept confidential throughout the procurement process. Subject to applicable laws and the Agency procurement policies, financial information required to be submitted with Price Proposals to establish financial responsibility and other financial data, such as wages and overhead rates, shall be handled as confidential data and utilized on a “need-to-know” basis for Proposal evaluation. Reasonable efforts will be made to avoid disclosure except as necessary for evaluation.

Offerors shall specifically designate and clearly label “CONFIDENTIAL” any and all materials or portions thereof which they deem to contain trade secrets or other proprietary information, which is exempt from public inspection and copying. The Offeror shall provide the legal basis for the exemption to the Agency upon request. If a Proposal does not clearly identify the “CONFIDENTIAL” portions, the Agency will not notify the Offeror that its Proposal will be made available for inspection.

If a request is made for disclosure of material or any portion marked “CONFIDENTIAL”, the Agency will determine whether the material should be made available under the law. If the Agency determines that the material is not exempt and may be disclosed, the Agency will notify the Offeror of the request and allow the Offeror ten (10) working days to take appropriate action.

If the Offeror fails or neglects to take such action within said period, the Agency may release the portions of the Proposal deemed subject to disclosure.

To the extent that the Agency withholds from disclosure all or any portion of the Offeror’s documents at Offeror’s request, Offeror shall agree to fully indemnify, defend and hold the Agency harmless from all damages, penalties, attorneys’ fees and costs the Agency incurs related to withholding information from public disclosure. By submitting a Proposal, the Offeror consents to the procedure outlined in this paragraph and shall have no claim against the Agency by reason of actions taken under this procedure.

Examination of Request for Proposal Documents

By submitting a Proposal, the Offeror represents that it has thoroughly examined the work required under this RFQu and that it is capable of performing quality work to achieve the project’s goals and objectives.

Property of the Agency

All materials submitted in response to this Proposal become the property of the Agency and will not be returned.

23. AGENCY RESERVED RIGHTS

Irregularities in Proposals: Solely at its option, Valley Metro reserves the right to waive any minor insufficiencies and/or non-material irregularities in any Proposal and any materials submitted in response to this RFQu. Valley Metro also reserves the right to allow any Offeror to correct minor insufficiencies or non-material irregularities within their Proposals and any materials submitted in response to the RFQu solely at its discretion.

24. CANCELLATION

The Agency reserves the right to cancel this RFQu at any time before execution of the Contract by all parties if cancellation is deemed to be in the Agency’s best interests. In submitting a Proposal, Offerors acknowledge that, even after Notice of Award, should the Agency decide not to enter into the Contract, such decision will not result

in any claims or causes of action for costs or damages by Offerors against the Agency. In no event will the Agency incur any liability for the cancellation of this RFQu or a Notice of Award. Offerors assume the sole risk and responsibility for all expenses connected with the preparation of a Proposal. The Agency reserves the right to reject all Proposals and re solicit or cancel this procurement if deemed by the Agency to be in their best interest.

25. DISCLAIMER

This RFQu has been prepared for informational purposes relating to the proposed transaction only and upon the express understanding that it will be used solely for the purposes set forth herein. This RFQu is based on information provided by Agency and other sources believed to be reliable. However, such information is not guaranteed as to accuracy or completeness and is not to be construed as a representation or warranty of the Agency.

This RFQu does not purport to be all inclusive or to contain all the information that an Offeror may desire in investigating the Project. Neither the Agency nor any consultant or advisor to Valley Metro Rail makes any express or implied representation or warranty as to the accuracy or completeness of the information contained herein or made available in connection with any further investigation of the Project.

The Offeror expressly disclaims any and all liability which may be based on the Information or any errors contained therein or omissions therefrom. No other person has been authorized by the Agency to provide any information with respect to the proposed transaction other than the Information, and, if given or made, such other information must not be relied upon as having been authorized by the Agency. In furnishing this RFQu, no member of the Offeror undertakes any obligation to provide any Offeror with access to any additional information.

-- End --



EXHIBIT C – SPECIAL TERMS AND CONDITIONS

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1. TERM OF CONTRACT

The term of this Contract shall be for a period of five years.

2. CONTRACT ORDER OF PRECEDENCE

In the event of a conflict in the provisions of the Contract, as accepted by Valley Metro and as they may be amended, the following shall prevail in the order set forth below:

- Price Schedule
- Solicitation Instructions and Conditions
- Special Terms and Conditions
- General Terms and Conditions
- Federal Terms and Conditions
- Other Provisions of the Contract, whether incorporated by reference or otherwise
- Scope of Work or Technical Specifications

In the event the parties hereto cannot resolve a dispute or conflict, the final decision-making authority shall reside with Valley Metro Chief Executive Officer.

3. METHOD OF COMPENSATION

Contractor shall invoice upon completion and acceptance of work by the Valley Metro. Invoices may be submitted to:

Valley Metro
101 N. 1st Avenue, Suite 1400
Phoenix, AZ 85003

Invoices shall conform to policies or regulations adopted from time to time by Valley Metro. Instruction to complete this document will be sent with Contract award information. Invoices shall be legible and shall contain, at a minimum, the following information: (1) the contract and order number (if any); (2) a complete itemization of all bid unit prices per this contract including quantities ordered and delivery order numbers (if any); (3) any discounts offered to Valley Metro under the terms of the contract; (4) evidence of the acceptance of the supplies or services by Valley Metro; (5) unique traceable invoice number(s); and (6) any other information necessary to demonstrate entitlement to payment under the terms of the contract. Failure to provide the above critical information may result in the rejection and return of the invoice for resubmission with complete data.

Payment shall be made within 30 days after Valley Metro's receipt of a properly prepared invoice.

If it becomes necessary to modify the Scope of Work to eliminate work that would allow the Scope of Work to be completed within the Task Order price or the Not-to-Exceed Limitation Amount of each Task Order and/or Task Order Time, the Contractor's fee may be renegotiated accordingly, pursuant to the Agreement. In no event is the Contractor authorized to incur costs, which exceed each Task Order Price or Not-to-Exceed Limitation amount of each Task Order, without prior written amendment/revision to the Agreement. Any such costs incurred without prior written Amendment to the Agreement shall not be considered reimbursable costs hereunder.



Contractor **will not be eligible** for reimbursement of travel related expenses incurred in the performance of this Agreement unless specified within the scope of work.

- A. If the specified scope of work provides for Travel and Related Costs the following applies: (Must be specified as Travel and Related Costs)
- Travel and Related Costs. All billable Travel and related cost must be pre-approved by METRO. METRO shall compensate Contractor for pre-approved travel per Federal Travel Regulations only. METRO will not compensate for unauthorized travel and related costs. METRO will pay for general travel lodging up to the Federal Per Diem rate. Federal Per Diem Website – www.gsa.gov

Contractor **will not be eligible** for reimbursement of Price Escalation incurred in the performance of this Agreement unless specified within the scope of work.

- A. If Price Escalation is specified within the scope the following will apply
- Any requests for price adjustments must be submitted sixty (60) days prior to the end of each Task Order. Justification for the requested adjustment in cost of labor and/or materials must be accompanied by appropriate documentation. Escalation shall not exceed the increase in the U.S. Department of Labor (Bureau of Labor Statistics) Consumer Price Index - All Urban Consumers, Series Id: CUUR0400SAO Not Seasonally Adjusted, Area: West Urban, Item: All Items. The start point for determining escalation shall be from the month of Contract award. Increases shall be approved in writing by METRO prior to any adjusted invoicing submitted for payment.

4. TRAVEL RELATED EXPENSES

Contractor will not be eligible for reimbursement of travel related expenses incurred in the performance of this Agreement unless specified within the scope of work.

5. NOTICES AND COMMUNICATIONS

All notices and other communications concerning this Agreement shall be written in English and shall bear the number assigned to this Agreement by Valley Metro. Notices and other communications may be delivered personally, by email, by telephone facsimile, or by regular, certified, or registered mail. Notices and communications are effective when received.

Prior to issuance of the Notice to Proceed, a notice to Valley Metro will be effective only if it is delivered to Valley Metro's Contract Administrator, 101 N. 1st Avenue, Suite 1400 Phoenix, Arizona 85003. All correspondence shall reference the Contract number.

Prior to commencement of Work on the Project, a notice to the Contractor will be effective if it is delivered to the individual who signed this Agreement 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 this Agreement or in a written notice to Valley Metro.

All notices and other communications required or permitted by this Agreement shall be in writing and (i) delivered in person, (ii) sent by first class mail, (iii) sent by certified first class mail, return receipt requested, postage prepaid, or (iv) by commercial or United States Postal Service overnight delivery service, to the following addresses or to



such other addresses as the Parties may hereafter designate by written notice. All such notices or other communications shall be deemed delivered immediately if delivered in person, three (3) days after deposit in the United States Postal Service first class mail if mailed, upon receipt as indicated on signed certified mail receipt and on the following Business Day if sent by overnight delivery service.

Manager, Contracts & Procurement Valley Metro
101 North First Avenue, Suite 1400
Phoenix, AZ 85003

Contractor:
(TBD)

6. NOTICE OF LABOR DISPUTES

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor immediately should give notice, including all relevant information, to the Valley Metro Public Art Project Manager and the Valley Metro Contracts and Procurement Manager.

The Contractor agrees to insert the substance of this clause, including this paragraph in any subcontract under which a labor dispute may delay the timely performance of this Contract; except that each subcontract should provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Sub-Contractor should immediately notify the next higher tier Sub-Contractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

7. COMMUNICATIONS WITH CONTRACTOR'S STAFF

In order to ensure efficient communication of operational needs, Valley Metro staff shall be permitted to communicate directly with Contractor's staff regarding day-to-day issues for the purpose of inquiry as to factual performance issues. The Valley Metro will not give Contractor's staff directions concerning performance under the Contract. Issues which affect the Contract will be communicated through the Public Art Project Manager and Procurement Department.

8. REMOVAL OF CONTRACTOR'S PERSONNEL

The Contractor acknowledges that any person assigned to work under this Contract must perform their duties so as to not unduly impair contract performance. By assigning a person to work under this Contract, the Contractor agrees to be responsible for the behavior of that person during contract performance.

The Contractor acknowledges that Valley Metro has the right to require the removal of any Contractor employee that Valley Metro determines at its sole discretion to be negatively affecting performance of work under the contract. Examples of such behavior include: (1) conduct which poses a threat to the safety of anyone working under the contract; (2) conduct which is disruptive to contract performance; (3) careless work; (4) conduct which is not appropriate when transporting participants under this Contract.

Upon receipt of written notice from Valley Metro that a person's behavior is unduly impairing contract performance, the Contractor agrees to remove that person from doing any further work on the Contract, and to

cause that person to be removed from providing service under this Contract. The Contractor agrees that it is not entitled to any additional costs it may incur as a result of the removal of the person named by Valley Metro.

9. POST AWARD MEETING

Contractor shall attend a post-award kick-off meeting with Valley Metro staff for discussion of the terms and conditions of Contract. Valley Metro Public Art Administrator will coordinate this meeting.

10. REPORTING

Contractor shall provide weekly Status Reports to Valley Metro’s Chief Operations Officer or his/her designee, as requested.

11. RISK OF LOSS

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized Valley Metro personnel at the location designated in the Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

12. ANTI-KICKBACK AND GRATUITIES

The Contractor is prohibited from receiving any kickbacks, gratuities, payments, merchandise, equipment, supplies, services or favors in exchange for directing additional billable services to any Sub-Contractor.

13. USE OF THE WORK FOLLOWING AGENCY ACCEPTANCE

The Agency shall have sole control over the siting, function, and display of the Work after title to the Work has passed to the Agency. Prior to commencing any substantial change to the siting, function, or display of the Work, the Agency shall make all reasonable attempts to notify the Contractor of the proposed change and shall provide the Contractor a reasonable opportunity to consult with Agency, in accordance with terms and conditions as approved by Agency, regarding the change. In the event that the Contractor and Agency do not agree, the Contractor shall have the right to remove his/her name from the Work, and Agency shall no longer use the Contractor’s name in association with that Work. The foregoing shall be the Contractor’s exclusive remedy regarding substantial changes to the Agency siting, function, or display of the Work.

The Contractor acknowledges and agrees that the Work is to be incorporated into a public transit system and Agency has sole authority over the present and future design and use of the transit system. The Contractor further acknowledges and agrees that it is inherent in the nature of a public transit system that the Work may be subjected to destruction, distortion, mutilation, or other modification (collectively, “damage”) due to repair, renovation or other alteration of the transit system. Prior to commencing any work that may subject the Work to damage, Agency shall make all reasonable attempts to notify the Contractor of the proposed work and shall provide the Contractor a reasonable opportunity to consult with Agency, in accordance with terms and conditions as approved by Agency, regarding the avoidance or repair of potential damage to the Work. In the event that the Contractor and Agency do not agree, the Artist shall have the right to remove his/her name from the Work, and Agency shall no longer use the Contractor’s name in association with that Work. The foregoing shall be the Contractor’s exclusive remedy regarding damage to the Work.

If Agency proposes to do any work that will destroy the Work, Agency shall make all reasonable attempts to notify the Contractor prior to commencement of that work and the Contractor shall have the right to remove the Work, at the Contractor’s sole expense and without unreasonably delaying or interfering with Agency’s work. Ownership of any Work removed by the Contractor pursuant to this provision shall revert to the Contractor.

In the event the Work is damaged from any cause and Agency is unable or unwilling to repair it, the Artist shall have the right to remove his/her name from the Work, and Agency shall no longer use the artist’s name in association with this Work.

With regard to any notices required or permitted by this Section, Agency shall be deemed to have made a reasonable, good faith effort to notify the Contractor if Agency sends the notice by registered mail to the last address provided to Agency by the Contractor.

14. PROPRIETARY RIGHTS AND RIGHTS OF REPRODUCTION

The Contractor retains: (1) all rights to the Work under the Copyright Act of 1976, 17 U.S.C. & 101, et seq., as amended by the Visual Artists Rights Act of 1990, and any successor act, except that the Contractor hereby waives his rights under 17 U.S.C. §106A(a); and (2) all rights expressly granted in this Agreement. All other rights in and to the Work, including but not limited to all rights in the nature of “Droit Moral” in regard to any continuing interest the Contractor may have in the maintenance or modification of the Work, are expressly waived by the Contractor and, insofar as such rights are transferable, are assigned to Agency.

The Contractor expressly reserves every right available to him/her to control the making and dissemination of copies or reproduction of the Work, except as those rights are limited by this Agreement. The Contractor authorizes Agency and its assigns to electronically scan, duplicate, or download images of the Work, and to make photographs, drawings, and other two-dimensional reproductions of the Work without consent of the Contractor for any noncommercial use for the sole use and benefit of the public, including, but not limited to, education, public relations, advertising, brochures, and similar uses when there is no revenue or royalty associated with such reproduction. The Contractor shall not make any exact duplications of the Work to full scale or in any manner that could cause confusion as to which is the original and which is the duplicate.

All reproductions by the Agency, including, without limitation, electronic or digital reproduction, shall contain a credit to the Contractor and a copyright notice substantially in the following form: “Copyright, Contractor’s name, all rights reserved, date”, and/or any other credit mutually agreed upon by the parties, in such a manner and location as shall comply with the U.S. Copyright Laws.

The Contractor shall give credit substantially in the following form for any public showings of reproduction of the work: “From Valley Metro Rail, Inc., Capitol Extension Light Rail Transit, funded by City of Phoenix Transit Tax Dollars.”

15. REPRESENTATIONS AND WARRANTIES

The Contractor represents that he/she has not previously granted and will not grant any rights in the Work to any third party that are inconsistent with the rights granted to Agency herein.

The Contractor represents and warrants that the Work does not infringe or violate any copyright, trade secret, trademark, patent, or other proprietary or personal right held by any third party. If the Work is ever held to



constitute an infringement of any third party's rights and its use is enjoined, the Contractor shall immediately and at his/her expense (a) procure for Agency the right to continue its use of the Work in accordance with this Agreement, (b) alter the Work to eliminate infringing portions, subject to Agency's approval, or (c) replace the Work with a version acceptable to Agency that is non-infringing.

For one year from the date the Agency accepts the Work, the Contractor shall be responsible for and shall warrant the Work against all defects in the Work's workmanship, materials, fabrication techniques, installation, and function. The Contractor's liability for breach of the warranty shall be limited to repairing or replacing the Work or paying the Agency the cost of repairs or replacement. The responsibility for the determination for the Contractor's liability for faults or defects in the work during the one-year period shall be solely that of Agency, which determination shall be reasonable.

The foregoing warranties are in lieu of all other warranties, expressed or implied, that may be applicable to the work, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

The Contractor shall notify Agency of changes in his/her address. Failure to do so shall constitute a waiver by the Contractor of any notices required from Agency under this Agreement.

16. CONTRACTOR RESPONSIBILITIES

Assignment, the Contractor shall not assign or attempt to assign this agreement without the advance, written approval of the Agency. Any such unapproved assignment shall be void.

-- End --



EXHIBIT D – GENERAL TERMS AND CONDITIONS

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1. FUNDING

Offeror is hereby notified that any contract resulting from this RFQ is contingent upon funds appropriated by the cities or by Agencies' Board of Directors and that may be appropriated in the future by federal or other sources. In the event that funding is eliminated or decreased, Agencies reserve the right to terminate any such contract or modify it accordingly.

2. PAYMENTS

After Notice of Preliminary Selection, the selected Contractor shall submit a current W-9 form and electronic payment information to the Agency's Designated Point of Contact.

3. CONTRACT ADMINISTRATION

To ensure Contract compliance, a contract administration process will be an integral part of Contract. Valley Metro employees will be assigned as contract monitors. The contract administration process is an audit and feedback system and will be in addition to any of the other policies and procedures contained in the RFQ. The contract administration process is a total quality management tool that empowers Valley Metro to monitor and assure Contract compliance. No additional cost is anticipated to be incurred by Contractor by the presence of the contract administration process as long as Contract compliance is maintained. Except for the more formalized feedback of findings, the normal contractor/user relationship will exist per Contract terms, and the contract administration process should be transparent.

4. COOPERATION WITH OTHER CONTRACTORS/SUBCONTRACTORS

The Contractor shall fully cooperate with other Valley Metro Contractor(s)/subcontractors and shall assign and carefully plan and perform its work to accommodate the work of other Valley Metro Contractor(s). The Contractor shall not intentionally commit or permit any act that will interfere with the performance of work by any other Valley Metro Contractor(s)

5. CONTRACT CLOSEOUT

At the end of the Contract period, Valley Metro will review the service to ensure all required deliverables have been met. This includes, but is not limited to submission and acceptance of all reports and inspection and inventory of all Valley Metro equipment and facilities provided to Contractor for the execution of the Contract. Contractor shall resolve any or all outstanding issues within 30 days of Contract expiration at which time Valley Metro will issue a Notice of Contract Closure to finalize the Contract Closure between both parties. Contractor shall keep all records pertaining to the service for a minimum of three (3) years after the Contract expiration and make available said records to Valley Metro or its agents for audit, with advance notice. In the event of litigation or claims, all records will be maintained until disposition of the litigation or claim.

Contractor shall cooperate with Valley Metro and its agents in the Contract closeout process, during the Contract and after the Contract expiration date. Final payment or part thereof, may be withheld by Valley Metro until the Contractor completes or resolves all outstanding issues and Contract closeout process is complete.

6. GOVERNING LAW

The contract shall be governed by the laws of the State of Arizona without reference to conflict of law's provisions.



All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, and subsequent modifications, clarifications or amendments 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 the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Valley Metro requests that would cause Valley Metro to be in violation of the FTA terms and conditions.

This contract is funded by local government and federal transit administration funds. Contractor shall conform to all applicable FTA regulations and requirements as if all funds involved were FTA funds.

To the extent applicable, Valley Metro and Contractor each warrant compliance with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction via the contract, and all applicable employment laws, rules and regulations, including to the extent applicable, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Parties acknowledge that a breach of this warranty is a material breach of the contract and parties are subject to penalties for violation(s) of this provision, including termination of the contract. Contractor and Valley Metro each retain the right to inspect the documents of any and all Contractors, subcontractors and sub-subcontractors performing work and/or services relating to the contract to ensure compliance with this warranty. Any and all costs associated with inspections are the sole responsibility of the party subject to inspection. Valley Metro and Contractor each hereby agree to indemnify, defend and hold each other harmless for, from and against all losses and liabilities arising from any and all violations thereof. For Contracts in excess of One Hundred Thousand (\$100,000) Dollars, Contractor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

7. COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor shall comply with all Federal, State and City laws, statutes, regulations, administrative requirements, executive orders and ordinances.

Contractor shall adhere to all applicable federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Work under this Contract.

If any discrepancy or inconsistency is discovered in the Contract in relation to any such requirements of law, the Contractor shall immediately report the facts to Valley Metro, in writing.

Should changes to any such applicable federal, state, and local laws, regulations, executive orders, and ordinances occur after the date of execution of this Contract which in the Contractor’s opinion require a change in the Contract Amount or time required for the performance of the Work hereunder, the Contractor shall provide written notification to Valley Metro.

8. CONTRACTOR LICENSE REQUIREMENT

Contractor shall procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of their business. Contractor shall keep themselves fully informed of existing and future Federal, State, and Local laws, ordinances and regulations, which in any manner affect the fulfillment of Contract and shall comply with the same. Contractor is advised to contact the Arizona Registrar of Contractors, Chief of Licensing to



ascertain licensing requirements for a particular contract. Contractor shall identify which license(s), if any, the Registrar of Contractors requires for performance of the contract.

9. SEVERABILITY

Should one or more of the provisions contained in the Contract be determined to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remainder of the Contract shall be unaffected. The affected provision shall be amended or interpreted, if possible, so as to correct the deficiency and give effect to the intent of the parties.

10. AUTHORIZED REPRESENTATIVES AND NOTICES

Contractor shall designate a representative to represent its organization and act on its behalf. This agent shall have the authority to make binding and enforceable decisions in the name of Contractor and to accept all notices that Valley Metro desires to serve, or that are required by the Contract to be served, on the Contractor. At the start of the work, Contractor shall advise Valley Metro, in writing, of the name, address, and telephone number (both day and night) of such designated agent. Contractor shall notify Valley Metro promptly of any changes in this designation.

All notices and other communications concerning the contract shall be written in English and shall bear the number assigned to the contract by Valley Metro. Notices and other communications may be delivered personally, by telegram, by telephone facsimile, or by regular, certified, or registered mail. Notices and communications are effective when received.

Prior to issuance of the Notice to Proceed, a notice to Valley Metro will be effective only if it is delivered to Valley Metro's Contract Administrator, 101 N. 1st Avenue, Suite 1400 Phoenix, Arizona 85003. All correspondence shall reference the Contract number.

Prior to commencement of Work on the Project, a notice to the 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 Valley Metro.

All notices and other communications required or permitted by the contract shall be in writing and (i) delivered in person, (ii) sent by first class mail, (iii) sent by certified first class mail, return receipt requested, postage prepaid, or (iv) by commercial or United States Postal Service overnight delivery service, to the following addresses or to such other addresses as the Parties may hereafter designate by written notice. All such notices or other communications shall be deemed delivered immediately if delivered in person, three (3) days after deposit in the United States Postal Service first class mail if mailed, upon receipt as indicated on signed certified mail receipt and on the following Business Day if sent by overnight delivery service.

Manager, Contracts & Procurement
Valley Metro
101 North First Avenue, Suite 1400
Phoenix, AZ 85003

CONTRACTOR:
(TBD)

11. DILIGENCE AND STANDARD OF CARE

The Contractor represents that it shall perform the Services with the standard (the “Standard”) of care, skill and diligence expected, at the time and place of performance, of recognized professional engineering firms performing services of a similar type and nature.

Opportunity to Cure

Valley Metro may provide Contractor a reasonable opportunity to cure, at Contractor’s expense, all errors and omissions which may be disclosed during Project implementation. Should Contractor fail to make such correction in a timely manner, such correction may be made by Valley Metro, and the cost thereof charged to Contractor.

12. APPROVALS

As called for in the Contract, Contractor will provide documents for approval by the Valley Metro. Any approval or conditional approval with comment signifies permission to Contractor to proceed with the work and indicates, but does not warrant, that Valley Metro has seen nothing in the document at variance with the Contract. The Contractor's proceeding with the work prior to this approval is at the Contractor's own risk. Neither approval nor conditional approval with comment shall relieve Contractor of any of his/her responsibilities under the Contract.

13. CHANGES

Valley Metro may, at any time make changes in the Work within the general scope of the Contract, including but not limited to changes:

- In the Specifications;
- In the method or manner of performance of the Work;
- In Valley Metro furnished facilities, equipment, Materials, services, or Work Site; or
- In the performance period for the Work. (is capitalization used in this section correct?)

Within 14 calendar days after Contractor’s receipt of the written change order request for modification of the Contract, Contractor shall submit to the Valley Metro Manager of Contracts and Procurement a detailed price schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiation between Contractor and the Valley Metro Manager of Contracts and Procurement. At the time both parties shall execute a detailed Contract modification in writing. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the contract disputes clause.

It is distinctly understood and agreed that no claim for payment for work done or materials furnished by the Contractor outside of these parameters shall be paid by Valley Metro. Any such services or materials furnished by Contractor without such written order shall be at the risk, cost and expense of the Contractor, and no claim for compensation for any such services or materials shall be made.

The Contractor, for each, shall maintain separate accounts, of all incurred separable costs allocable to the change. The Contractor shall maintain such accounts until the Parties agree to an equitable adjustment for the changes ordered by Valley Metro.

Acceptance of a Change Order by the Contractor shall constitute a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including but not limited to impact, delay or acceleration of



damages, arising from the subject matter of the Change Order. Each Change Order shall be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the change order. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. This Contract, as amended, forever releases any claim against the Valley Metro for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on unchanged Work.

14. VERBAL AGREEMENTS

Verbal change orders to the Contract are not permitted. No changes in the scope, specifications, character, or complexity of work shall be made by the Contractor without first receiving written approval by the Valley Metro Chief Executive Officer or his designee properly defining and limiting any such change. Contractor shall be liable for all costs resulting from and/or for satisfactorily correcting any specification change not properly ordered by written modification to the Contract and signed by the Valley Metro Chief Executive Officer or his designee.

The Contractor shall promptly notify Valley Metro in writing when the ContractorContractor has received direction, instruction, interpretation or determination from any source which the Contractor believes may cause any change in cost or time required for the performance of the Work. Such written notification shall state.

The date, circumstances, and source of the order and (punctuation?)

The reasons why the Contractor regards the order or action as a change. Such notice of Change shall be given to ~~the~~ Valley Metro before the Contractor acts on said direction, instruction, interpretation or determination and Valley Metro shall make written reply within seven (7) Days after its receipt.

If notification is not provided to ~~the~~ Valley prior to commencing work, the Contractor assumes all risks and responsibility for any additional costs incurred and related schedule impacts.

15. LEGAL WORKER REQUIREMENTS

Contractor agrees that: Contractor and each Sub-Contractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.

Under the provisions of A.R.S. § 41-4401, each party hereby warrants to the other that each party and all of its subcontractors (if any) will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214 (A) (hereinafter "Contractor Immigration Warranty")

A Breach of the Contractor Immigration Warranty shall constitute a material breach of the contract and shall subject the breaching party to penalties up to and including termination of the contract at the sole discretion of the non-breaching party.

Each party retains the legal right to inspect the papers of any Contractor or subcontractor employee of the other party who works on this contract to ensure that the Contractor or subcontractor is complying with the Contractor Immigration Warranty. Each party agrees to assist the other party in regard to any such inspections.



Each party may, at its sole discretion, conduct random verification of the employment records of the other party and any of its subcontractors to ensure compliance with Contractor’s Immigration Warranty. Each party agrees to assist the other party in regard to any random verification performed.

A party will not be considered in materially breach of the contract or the Contractor Immigration Warranty if the party establishes that it has complied with the employment verification provision prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A.

The foregoing provisions of subparagraphs 1-6 of this article must be included in any contract that a party enters into with any and all its subcontractors who provide service under this contract or any subcontract.

For Contracts in excess of One Hundred Thousand (\$100,000) Dollars, Contractor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

16. IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA) REQUIRED

Contractor understands and acknowledges that the IRCA applies to it. Contractor agrees to comply with the IRCA on performing under the Contract and to permit Valley Metro inspection of their personnel records to verify such compliance.

17. CONFLICTS OF INTEREST

The Contractor shall not engage the services in connection with the contract of any present or former employee of Valley Metro or any Contractor thereto who was involved as a decision maker in the selection or approval processes or who negotiated and/or approved billings or contract modifications for the contract. The Contractor agrees that, to the best of its knowledge, no public or private interest exists and none shall be acquired directly or indirectly which would conflict in any manner with the performance of this contract.

Without limiting the generality of A.R.S. § 38-501 et seq., no member, officer, employee of Valley Metro or member of its governing body during his/her tenure or for three years thereafter, shall have any interest, direct or indirect, in the contract or the proceeds thereof. The contract is subject to termination pursuant to A.R.S. §38-511.

18. EQUAL EMPLOYMENT OPPORTUNITY

In connection with this procurement, the Contractor will take affirmative action to ensure that all applicants are considered for employment and that employees are treated during an application process and through employment without regard to their race, color, religion, sex, sexual orientation or domestic partnership, national origin, age, marital status, being disabled or disadvantaged, or any war-era veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and, selection for training, including apprenticeship.

The Contractor will furnish all necessary information and reports and will permit access to its books, records, and accounts by Valley Metro for the purposes of investigation to ascertain compliance with the nondiscrimination/ disadvantaged business provisions of any resultant Contract.

19. NON-DISCRIMINATION

Valley Metro has agreed to abide by the assurance found in 49 CFR Part 26.13(a) and required by the U. S. Department of Transportation. As a condition of this Contract, Valley Metro shall require each contract signed by Valley Metro with Contractor, and each subcontract signed by the Contractor with a subcontractor, to include the following assurance:

“The Contractor, subcontractor, or sub-recipient shall not discriminate on the basis of race, color, national origin, sex or creed in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Parts 21 and 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in the termination of this Contract or such other remedy as Valley Metro deems appropriate.”

20. AFFIRMATIVE ACTION IN EMPLOYMENT

Any Offeror performing under this Contract shall not discriminate against any worker, employee, or any member of the public because of race, creed, color, religion, sex or national origin, nor otherwise commit an unfair employment practice. The Offeror will take affirmative action to ensure that applicants are employed and that employees are dealt with during employment without regard to their race, creed, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrade, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Offeror further agrees that this clause will be incorporated in all subcontracts entered into with suppliers of materials or services, and all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this Contract.

21. AMERICANS WITH DISABILITIES ACT

Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Valley Metro through contracts with outside Contractor.

The Contractor shall be responsible for and agrees to indemnify and hold harmless the Valley Metro from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Valley Metro as a result of the Contractor's failure to comply with the provisions of subparagraph an above.

22. NONCOMPLIANCE

In the event of the Contractor's noncompliance with the nondiscrimination/disadvantaged business provisions of any resultant Contract, Valley Metro shall impose such Contract sanctions as it may determine to be appropriate, including but not limited to:

Withholding payments under the Contract until the Contractor complies; and/or,

Cancellation, termination, or suspension of the Contract in whole or in part.

23. PROHIBITED INTEREST

Without limiting the generality of ARS 38-501 et. seq., no member, officer, employee of Valley Metro, or member of its governing body during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any resultant contract or the proceeds thereof.

24. BREACHES AND DISPUTE

Applicability to Contracts

This section contains provisions or conditions, which will allow for administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements in this section flow down to all tiers.

Disputes

Disputes arising in the performance of contract, which are not resolved by agreement of the parties, shall be decided in writing by the authorized representative of the Valley Metro Chief Executive Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to Valley Metro Chief Executive Officer. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Valley Metro Chief Executive Officer shall be binding upon Contractor and Contractor shall abide by the decision.

Performance During Dispute

Unless otherwise directed by Valley Metro Chief Executive Officer, Contractor shall continue performance under Contract while matters in dispute are being resolved.

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/her employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage and in any event in accordance with A.R.S. Title 12.

Remedies

Unless Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Valley Metro and Contractor arising out of or relating to this Contract or its breach will be decided in a court of competent jurisdiction within the State of Arizona.



Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available there under 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 Valley Metro 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.

Confidentiality

Any proceeding initiated under this Section shall be deemed confidential to the maximum extent allowed by State Law and no Party shall make any disclosure related to the disputed matter or the outcome of any proceeding except to the extent required to seek interim equitable relief or to enforce an agreement reached or an award made hereunder. Notwithstanding the above, the Parties understand that Valley Metro is subject to Arizona's public records laws.

Additional Requirement

If at any time during the Contract period, the Contractor fails to render services of reasonably proper quality or has substantially failed to perform, keep and observe any of the terms, covenants, or conditions herein contained on the part of the Contractor to be performed, the Valley Metro may give the Contractor written notice to correct such conditions or cure such default and if such condition or default shall continue for ten (10) days after receipt of said written notice, then and in that event, Contract shall cease and expire. In the event of such termination, the Contractor shall immediately return that portion of the advance not applied as a credit against reimbursable expenses.

25. TERMINATION FOR CONVENIENCE

Performance under the contract may be terminated by Valley Metro in accordance with this clause in whole or, in part, whenever Valley Metro shall elect. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance under the contract is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

- incur no further obligations in connection with the terminated work, and, on the date set forth in the notice of termination, the contractor will stop work to the extent specified.
- terminate outstanding orders and subcontracts as they relate to the terminated work.
- settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work.

Valley Metro may direct the Contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to Valley Metro. The Contractor must still complete the work not terminated by the notice of termination and may incur such obligations as are necessary to do so.

Valley Metro may require the Contractor to transfer title and deliver to Valley Metro in the manner and to the extent directed by Valley Metro:

- any completed supplies; and
- such partially completed supplies and materials, parts, as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The Contractor shall, upon direction of Valley Metro, protect and preserve property in the possession of the Contractor in which Valley Metro has an interest.

Valley Metro shall be liable only for payment under the payment provisions of the Contract for services rendered before the effective date of termination.

Contractor shall put a similar clause in all of its Sub-Contractor agreements.

26. TERMINATION FOR DEFAULT

Valley Metro may, by written Notice of Default to the Contractor, terminate the whole or any part of contract, if Contractor fails to perform the services within the time specified herein or any extension thereof; or if Contractor fails to perform any of the other material provisions of the contract or so fails to make progress as to materially endanger performance of contract in accordance with its terms and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Chief Executive Officer may authorize in writing) after receipt of notice from the Chief Executive Officer specifying such failure.

If the contract is terminated in whole or in part for default, Valley Metro may procure, upon such terms and in such manner as it may deem appropriate, supplies or services similar to those so terminated. Contractor shall be liable to the Valley Metro for any excess costs for such similar supplies or services and shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

Except with respect to defaults of subcontractor, Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor and if such default arises out of causes beyond the control of both Contractor and subcontractor and without the fault or negligence of either of them, Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

Payment for completed services delivered to and accepted by Valley Metro, shall be at the contract price. Valley Metro may withhold from amounts otherwise due Contractor for such completed deliveries/services such sum as the Valley Metro determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders.

If, after notice of termination of contract under the provisions of this clause, it is determined for any reason that Contractor was not in default under the provisions of this clause or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to termination for the convenience of the Valley Metro.

The rights and remedies of Valley Metro provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under contract.

27. OWNERSHIP OF WORK

All reports, drawing plans, specifications and other materials prepared, or in the process of being prepared, for the services to be provided by the proposer shall be and are the property of Valley Metro Rail and the Regional Public Transportation Authority (RPTA), and Valley Metro and RPTA shall be entitled access to, and copies of during the progress of the work.

28. CONFIDENTIALITY

The contract creates an exclusive and perpetual license for Valley Metro to copy, use, modify, reuse, or sub-license any and all copyrights and designs embodied in plans, specifications, studies, drawings, estimates, work product, data and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor under the contract (“Documents & Data”).

Contractor shall require all subcontractors to agree in writing that Valley Metro is granted an exclusive and perpetual license for any Documents & Data the subcontractor prepares under the contract.

Contractor represents and warrants that Contractor has the legal right to grant the exclusive and perpetual license for all such Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Contractor or provided to Contractor by Valley Metro.

Valley Metro shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by the contract shall be at Valley Metro’s sole risk.

29. INTELLECTUAL PROPERTY

The contract creates an exclusive and perpetual license for Valley Metro to copy, use, modify, reuse, or sub-license any and all copyrights and designs embodied in plans, specifications, studies, drawings, estimates, work product, data and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor under the contract (“Documents & Data”).

Contractor shall require all subcontractors to agree in writing that Valley Metro is granted an exclusive and perpetual license for any Documents & Data the subcontractor prepares under the contract.

Contractor represents and warrants that Contractor has the legal right to grant the exclusive and perpetual license for all such Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Contractor or provided to Contractor by Valley Metro.

Valley Metro shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by the contract shall be at Valley Metro’s sole risk.

In addition, Valley Metro shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or

otherwise recorded on computer media (“Intellectual Property”) prepared or developed by or on behalf of Contractor under the contract as well as any other such Intellectual Property prepared or developed by or on behalf of Contractor under the contract.

Valley Metro shall have and retain all right, title and interest in Intellectual Property developed or modified under the contract whether or not paid for wholly or in part by Valley Metro, whether or not developed in conjunction with Contractor, and whether or not developed by Contractor. Contractor will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of Valley Metro.

Contractor shall also be responsible to obtain in writing separate written assignments from any subcontractor or agents of Contractor of any and all right to the above referenced Intellectual Property. Should Contractor, either during or following termination of the contract, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of Valley Metro.

All materials and documents which were developed or prepared by the Contractor for general use prior to the execution of the contract and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Contractor. However, unless otherwise identified and stated prior to execution of the contract, Contractor represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

Valley Metro further is granted by Contractor a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Contractor which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under the contract.

Valley Metro and its agents reserve the right to reproduce any and all documentation produced by the Contractor, whether such documentation is the Contractor’s standard documentation or such documentation is prepared specifically for the work covered by the Contract, for distribution at Valley Metro’s will, despite any notice to the contrary appearing on the documentation.

30. PUBLIC RECORDS/CONFIDENTIALITY

The proposal submitted by Contractor becomes the exclusive property of Valley Metro. SOQs will not be publicly opened. SOQs and evaluations will be kept confidential throughout the procurement process. Subject to applicable laws and Valley Metro procurement policies, financial information required to be submitted to establish financial responsibility and other financial data shall be handled as confidential data and utilized on a “need-to-know” basis for SOQ evaluation. Reasonable efforts will be made to avoid disclosure except as necessary for evaluation.

Offerors shall specifically designate and clearly label “CONFIDENTIAL” any and all materials, including financial data, or portions thereof which they deem to contain trade secrets or other proprietary information, which is exempt from public inspection and copying. The Offeror shall provide the legal basis for the exemption to Valley Metro upon request. If a SOQ does not clearly identify the “CONFIDENTIAL” portions, Valley Metro will not notify the Offeror that its SOQ will be made available per a Public Records Request. If a request is made for disclosure of material or any portion marked “CONFIDENTIAL”, Valley Metro shall determine whether the identified information is confidential pursuant to the Arizona Revised Statutes §36-664 and the Valley Metro Procurement Policies and Procedures. If required by law or by an order of a court, Valley Metro may be required to disclose such records or portions thereof, including without limitation those so marked. If Valley Metro determines that

the material is not exempt and may be disclosed, Valley Metro will notify the Offeror of the request and allow the Offeror ten (10) working days to take appropriate action. If the Offeror fails or neglects to take such action within said period, Valley Metro may release the portions of the SOQ deemed subject to disclosure. To the extent that Valley Metro withholds from disclosure all or any portion of the Offeror's documents at Offeror's request, Offeror shall agree to fully indemnify, defend and hold Valley Metro harmless from all damages, penalties, attorneys' fees and costs Valley Metro incurs related to withholding information from public disclosure. By submitting a SOQ, the Offeror consents to the procedure outlined in this paragraph and shall have no claim against Valley Metro by reason of actions taken under this procedure.

31. PUBLICITY AND ADVERTISING

The Contractor, its Sub-Contractors and suppliers shall not publish, nor cause to be published any advertisement or other material, including news releases and technical papers, regarding the subject matter of the contract at any time without the prior written authorization of Valley Metro. The 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 Agreement or by law without the prior written authorization of Valley Metro. In addition, advertising or other copy mentioning Valley Metro or quoting the opinions of any of its employees shall not be released before such copy is approved in writing by Valley Metro before release. Any material proposed for publication must be factual and not state or imply endorsement by Valley Metro of any firm, service, or product.

32. CODE OF ETHICS AND WRITTEN STANDARDS OF CONDUCT

The Contractor understands that Valley Metro is governed by its Code of Ethics. Copies of Code of Ethics can be obtained from Valley Metro.

Valley Metro maintains its own written code of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of Valley Metro will participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award: (1) The employee, officer, agent, or Board member, (2) Any member of his immediate family, (3) His partner, or (4) An organization that employs, or is about to employ, any of the above. Valley Metro's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from Contractor, potential Contractor, or parties to sub agreements. Valley Metro has minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct provide for penalties, sanctions, or other disciplinary action for violation of such standards by Valley Metro's officers, employees, or agents, or by Contractor or their agents.

33. SUBSTANCE ABUSE

If specified within the scope of work the Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 655 et. seq., and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Arizona, or the City of Phoenix, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as

required under 49 CFR Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 655 and to submit the Management Information System (MIS) reports before March 15 to Valley Metro. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

34. INDEPENDENT CONTRACTOR

Under the terms of the contract, the Contractor is an independent Contractor and has and retains full control and supervision of the services performed by and full control over the employment and direct compensation and discharge of all persons, other than Valley Metro employees, assisting in the performance of its services hereunder. The Contractor agrees to be solely responsible for all matters relating to wages, hours of work, working conditions and payment of employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters.

The Contractor agrees to be responsible for its own acts and those of its subordinates, employees and any and all Sub-Contractors, if any, during the life of the contract.

If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

Valley Metro and the Contractor acknowledge that although Valley Metro shall oversee and monitor the Contractor, Valley Metro will not control the day-to-day operations of the Contractor or any of its Sub-Contractors. Valley Metro shall not determine means, methods, techniques, procedures or safety precautions and programs in connection with the Contractor's and Sub-Contractor performance under the contract, which shall solely be the responsibility and obligation of the Contractor.

Improper Exercise of Authority. It is further understood and agreed that the Contractor shall not in any way exercise any portion of the authority or powers of Valley Metro and shall not make a contract or commitment, or in any way represent itself as an agent of Valley Metro beyond the scope of the contract unless expressly authorized, in writing, by Valley Metro.

Covenants Against Contingent Fees. The Contractor warrants that it has not employed or retained any company or person, to solicit or secure the contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the contract. The preceding sentence does not apply to Contracts entered into with Sub-Contractors for the performance of Professional Services as permitted under the contract. For breach or violation of this warranty, Valley Metro shall have the right to annul the contract without liability, or in its discretion, to deduct from the Contract Price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

35. PRIME CONTRACTOR RESPONSIBILITIES

The selected Contractor will be required to assume responsibility for all services offered in their proposal whether or not they produce them. Further, Valley Metro will consider the selected Contractor to be the sole point of contact with regard to contractual matters.

36. INSPECTION OF WORK

All work (which term in this section includes services performed, and material utilized in the performance of services) shall be subject to inspection and test by the Valley Metro to the extent practicable at all times and places during the term of the contract. The Valley Metro shall have the right to enter the Contractor's premises for the purpose of inspecting and auditing all data and records which pertain to the Contractor's performance under the contract. The Valley Metro, the City of Phoenix (as federal designated recipient of FTA funds) and agents of their choice shall also have the right to enter the Contractor's premises for the purpose of inspecting vehicles owned by the Contractor that are used to provide service under the contract.

If any work performed hereunder is not in conformity with the requirements of the contract, the Valley Metro shall have the right to require the Contractor to perform the work again in conformity with such requirements at the Contractor's expense. When the work to be performed is of such a nature that the defect cannot be corrected by re-performing the work, the Valley Metro shall have the right to (1) require the Contractor to immediately take all necessary steps to ensure future performance of the work in conformity with the requirements of the contract; and (2) reduce the contract price to reflect the reduced value of the work performed. In the event the Contractor fails promptly to perform the work again or take necessary steps to ensure future performance of the work in conformity with the requirements of the contract, the Valley Metro shall have the right to have the work performed in conformity with the contract requirements and charge the Contractor any costs to the Valley Metro that are directly related to the performance of such work, or to terminate this contract for default.

No completion of any audit or inspection by the Valley Metro constitutes a representation that operations or equipment are in compliance with any federal, state or local laws. Such responsibility is uniquely that of the Contractor.

37. AUDIT AND INSPECTION OF RECORDS

The Contractor shall permit the authorized representative of the United States Department of Transportation and of the Comptroller General of the United States to inspect and audit all data and records of the Contractor relating to its performance and its subcontracts, if any, under this contract with which Federal funds are used from the date of the contract through and until the expiration of three years after completion of the contract. The inspection and audit provided in this section does not include an audit of the manufacturer's cost and/or profit, with the exception of single bid or sole source situations.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until Valley Metro, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.42(b).

38. FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from events beyond their control. Such events shall include, but not be limited to, acts of God, riots, acts of war, epidemics, unusual and unavoidable delays in delivery, unusually severe weather, governmental acts or omissions of governmental entities, fire,

communication line failures, or power failures. Based upon any such event, Contractor may be entitled to a Change Order for extra time and cost but shall not be entitled to an increase in Fee.

39. LOBBY PROHIBITION

Pursuant to Arizona Revised Statutes 41-1233 and Valley Metro Policy, no person, Contractor, or entity of any sort, public or private shall:

Retain or employ another person to promote or oppose legislation for compensation contingent in whole or in part upon the passage or defeat of any legislation, or the approval or veto of any legislation by the governor, and

Accept employment or render service for compensation on a contingent basis.

Lobby the legislature, the Valley Metro Board, or any other public body or official for compensation within one year after the person ceases to be a member of the Senate or House of Representatives.

In any manner seek to improperly influence the vote or decision of any member of the legislature, Valley Metro Board or Committee, or any other public body, official, or Valley Metro employee, through any means.

40. INTEGRATION CLAUSE

This Agreement, together with any attachments hereto, represent the entire agreement between the Parties and supersedes all prior negotiations, representations or agreements, either written or oral.

Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either Valley Metro or the Contractor.

41. HEADINGS

The subject headings of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any provisions of this Agreement.

42. INTERPRETATIONS

To the extent permitted by the context in which used, (a) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa; (b) reference to “persons” or “parties” in this Agreement shall be deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts and other entities; (c) (unless specified otherwise) references to paragraphs, sections or Sections are to paragraphs, sections or Sections of this Agreement; and (d) any reference to “day” in this Agreement shall be deemed to refer to calendar days unless this Agreement expressly requires Business Days.

-- End --



EXHIBIT H – INSURANCE REQUIREMENTS

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1. ALL INSURANCE COVERAGES

Upon execution of Contract, all required insurance coverage's must be evidenced to the Agency through receipt of acceptable certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing full compliance with the insurance requirements set forth in this Section.

All certificates and endorsements are to be received and approved by Agency or their designee before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project.

Failure of the Agency to demand such certificate(s) or other evidence of full compliance with these insurance requirements, or failure of the Agency to identify a deficiency from the evidence that is provided, shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

Certificate(s) of insurance and any notice of cancellation or material change should be mailed to the following address or such other addresses as designated by the Agency from time to time:

Risk Manager
101 North First Avenue, Suite 1400
Phoenix, AZ 85003

Certificate(s) of insurance shall identify this Agreement.

Failure to maintain the required insurance may result in the termination of this Agreement at the Agency's option.

If the Contractor fails to maintain the insurance as set forth in this Section, Agency shall have the right, but not the obligation, to purchase said insurance at Contractor's expense, in which case, Contractor shall promptly reimburse the Agency upon demand.

Agency reserves the right to review copies of all insurance policies procured to meet the requirements of this Section. This information must be provided within ten (10) business days of the Agency, or any Agency designee's, written request.

All coverage required by this Section shall be obtained from financially sound insurance companies authorized or approved to do business in the State of Arizona and rated A- VII or better by the A,M, Best Rated Carrier.

Each insurance policy shall not be subject to lapse, cancellation or material change in coverage unless at least thirty (30) days prior to written notice is provided to the Agency by the Contractor.

Certificates evidencing the completed operation liability coverage shall be required for eight years past acceptance, cancellation, or termination of the Professional Services.

The coverage required by this Section shall stipulate that the insurance afforded by the policies shall be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs participated in or maintained by the Agency or its Members shall be excess and not contributory to insurance required by this Section. This requirement does not apply to Workers' Compensation Insurance.

Any failure by the Contractor to comply with the reporting requirements of the required insurance coverage shall not affect the coverage provided to the Agency, the Agency's members and each of their respective officers, employees, directors, agents, and representatives.

If Contractor's commercial general and automobile liability policies do not contain a separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

To the extent commercially available and permitted by State Law, Contractor waives all rights of subrogation or similar rights against the Indemnified Group.

The stipulation of insurance coverage in this Section shall not be construed to limit, qualify, or waive any liabilities or obligations of Contractor, assumed or otherwise, under this Agreement.

Agency makes no warranty regarding the adequacy of the types or amounts of insurance necessary to protect any party against potential loss. The Contractor or Subcontractors must determine the amount of insurance and additional types of insurance necessary to protect its assets. Any additional insurance deemed necessary shall be purchased at the Contractor's or Subcontractor's sole expense.

Agency reserves the right to amend the requirements herein at any time during the Agreement, subject to at least sixty days written notice, including but not limited to providing any or all of the coverage required in this section, provided that an appropriate adjustment to the payment terms of the Agreement to offset any attributable increases or decreases in the Contractor's costs.

Contractor shall require any and all Subcontractors to maintain insurance as appropriate.

The insurance requirements herein are minimum requirements and in no way limit the indemnity covenants contained within this Agreement.

Any deductibles or self-insured retentions are not reimbursable costs.

contractor warrants that this Section has been thoroughly reviewed by Contractor's insurance agent/broker, who has been instructed to procure the required coverage.

2. **COMMERCIAL GENERAL LIABILITY INSURANCE**

Contractor shall maintain general liability and, if necessary, excess/umbrella insurance with a limit of liability not less than **\$1,000,000** each occurrence. The insurance shall, at a minimum, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability, and products and completed operations. The policy shall be endorsed to include the following additional insured language: "Valley Metro Rail, Inc. and its Member Cities and their employees, Regional Public Transportation Authority and its Member Cities and their respective officers, employees, directors, agents, and representatives shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor."

Additionally, the policy(ies) shall include, or be endorsed to include the following provision:

"The Indemnified Group shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement."



3. **AUTOMOBILE LIABILITY INSURANCE**

Contractor shall maintain automobile liability and, if necessary, excess/umbrella insurance with a limit of liability of not less than **\$1,000,000** each accident. Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the Contractor services.

The policy shall be endorsed to include the following additional insured language: “Valley Metro Rail, Inc. and its Member Cities and their employees, Regional Public Transportation Authority and its Member Cities and their respective officers, employees, directors, agents, and representatives shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor.”

4. **WORKERS' COMPENSATION INSURANCE**

Contractor shall maintain workers' compensation and employers' liability insurance in accordance with the Federal and State statutes having jurisdiction over the employees where the Professional Services are performed. The limits of liability for employers' liability coverage shall not be less than **\$1,000,000** each accident for bodily injury by accident and **\$1,000,000** each employee for bodily injury by disease.

The policy shall contain a waiver of subrogation in favor of the Indemnified Group.

5. **PROFESSIONAL LIABILITY**

Contractor shall maintain a professional liability insurance policy, appropriate to the Contractor's profession, covering errors and omissions arising out of the Contractor's Professional Services, or services of any person employed by the Contractor, or any person for whose acts, errors, mistakes or omissions the Contractor may be legally liable with a limit of liability of not less than **\$1,000,000** per claim.

In the event that any professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of four years beginning at the time work under this Contract is accepted.

Policy shall contain a waiver of subrogation in favor of the Indemnified Group.

6. **INDEMNIFICATION**

To the fullest extent permitted by law, Contractor, and its successors and assigns, shall pay, defend, indemnify and hold harmless Valley Metro Rail, Inc., its Member Cities, Regional Public Transportation Authority its Member Cities, and their respective officers, employees, directors, agents, and representatives. (“Indemnified Group”) from and against all allegations, demands, proceeding, suits, actions, claims, damages, losses, expenses, including, but not limited to, reasonable attorney fees, court costs, cost of appellate proceedings and all claim adjusting and handling expenses, but only to the extent related to, arising from or out of any negligent or willful acts, errors, or omissions of Contractor or any Subcontractor relating to services performed under this Agreement, including, but not limited to, services performed or materials supplied by any Subcontractor or anyone directly or indirectly employed by or contracting with Contractor or a Subcontractor or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees.



If any claim, action or proceeding is brought against the Indemnified Group, by reason of any event that is the subject of this Agreement and or described herein, Contractor, at its sole cost and expense, shall pay, resist or defend such claim or action on behalf of the Indemnified Group. The Agency shall cooperate with all reasonable efforts in the handling and defense of such claim. Any settlement of claims must fully release and discharge the Indemnified Group from any further liability for those claims. The release and discharge of the Indemnified Group shall be in writing and shall be subject to approval by the Agency, which approval shall not be unreasonably withheld or delayed. If Contractor neglects or wrongfully refuses to defend the Indemnified Group as provided by the Contract, any recovery or judgment against the Indemnified Group for a claim covered under this Agreement shall conclusively establish Contractor's liability to the Indemnified Group in connection with such recovery or judgment, and if the Agency desires to settle such dispute, the Agency shall be entitled to settle such dispute in good faith and Contractor shall be liable for the amount of such settlement, and all expenses connected to the defense, including reasonable attorney fees, and other investigative and claims adjusting expenses.

If a claim is asserted against the Agency or any other member of the Indemnified Group by any person not a Party to this Contract which is predicated upon alleged errors or omissions in Services or other responsibilities of the Contractor, the Agency shall promptly give notice of such claim by tender to the Contractor and the Contractor shall cooperate fully with the Agency and any other member of the Indemnified Group in the defense of such claim. This Section shall be applicable in the event a claim is made or suit filed in a court of law or equity or by demand for arbitration.

In the event that that a claim is tendered to Contractor by the Agency the Contractor shall provide quarterly status information regarding claims, including loss run, denials letters, settlement of loss, etc. This information shall be sent to the Agency's Risk Management Department by the Contractor.

Insurance provisions set forth are separate and independent from the indemnity provisions of this Section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions, except that payments pursuant to the insurance provided under this Agreement with respect to a claim covered by the indemnity provisions shall be used to satisfy that portion of the Contractor's indemnity obligations to the extent of such payments. The indemnity provisions of this Section shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions. The provisions of this Section shall survive the termination of the contract.

-- End --