

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AUSTIN, TEXAS

CONTRACT MODIFICATION

1. CONTRACT NO: 137666	2. CONTRACT MODIFICATION NO.: 3	3. EFFECTIVE DATE OF C.M. See Block 9	4. CONTRACTOR NAME: Herzog Transit Services, Inc.
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5. AGREEMENT TO MODIFY CONTRACT:

The parties hereto agree to modify the Contract identified in Block 1, above, as described in Block 10, below, pursuant to the terms and conditions of the Contract. Except as modified herein, all other provisions of the Contract (including, but not limited to, price, delivery, and completion date) remain unchanged.

6. AMOUNT OF THIS CONTRACT MODIFICATION: **NO CHANGE**

7. TERM OR PERIOD OF PERFORMANCE: **NO CHANGE**
PRIOR:
NEW:

8. HERZOG TRANSIT SERVICES, INC. ("CONTRACTOR"):

Name & Title: Edward Byers, General Manager
(Print or type)

Signature: 

Date Executed: 10/14/2015

9. CAPITAL METRO TRANSPORTATION AUTHORITY ("CAPITAL METRO"):

Name: Muhammad Abdullah, Contracting Officer
(Print or type)

Signature: 

Date Executed: 10/14/2015

10. DESCRIPTION OF CONTRACT MODIFICATION:

1. Refer to Exhibit E-Revised-6, Contractual Terms and Conditions. Exhibit E-Revised-6, Contractual Terms and Conditions, is replaced in its entirety with Exhibit E-Revised-7, Contractual Terms and Conditions, attached hereto and made a part hereof for all pertinent purposes. Section 57 on page 27 has been deleted and the change is reflected in the highlighted text.

For and in consideration of the amount stated above, which is the final contract modification amount agreed to by both parties, the receipt of and sufficiency of which is hereby acknowledged and confessed. The contractor has released, acquitted, and forever discharged and by the presents does for itself, its successors and assigns release, acquit and forever discharge Capital Metropolitan Transportation Authority (Capital Metro) from and against any claims, debts, demands, or cause of action which the contractor has or may have had a result of furnishing labor, supplies, or materials for the change orders stated above.

[END OF MODIFICATION #3]

EXHIBIT E – REVISED-7
CONTRACTUAL TERMS AND CONDITIONS
(SERVICES CONTRACT)

1. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term “subcontracts” includes purchase orders under this contract.

(b) In computing any period of time established in this contract, “days” means calendar days, and the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Texas holiday; in which event the period shall run to the end of the next business day.

(c) Fully burdened hourly labor rate: An hourly rate that includes all salary, overhead costs, general & administrative expenses, and profit.

2. FIXED PRICE CONTRACT

This is a fixed price contract for the supplies or services specified and stated elsewhere in the contract.

3. TERM

The Mobilization Period shall be effective the date of the Notice to Proceed, with the term of the Contract to begin October 1, 2015. The term of the contract shall be seven (7) years from October 1, 2015 through September 30, 2022. ~~the contract notice to proceed.~~ No work shall be performed under this contract prior to issuance of a Notice to Proceed.

4. OPTION TO EXTEND TERM

(a) The Authority may extend the term of this contract before the contract expires. If feasible, The Authority shall give written notice of its intent to extend before the contract expires. The preliminary notice shall not commit the Authority to an extension and any absence of notice shall not affect the validity of any exercise of option to extend the term of this contract.

(b) The option period prices shall be the unit prices provided on the Schedule.

(c) There shall be two (2) option periods of forty eight (48) month duration each.

(d) The total term of this contract shall not exceed fifteen (15) years.

5. OPTION TO EXTEND SERVICES

The Authority may require continued performance of any services within the limits and rates specified in the contract.

The option provision may be exercised more than once, but the total extension of performance hereunder beyond any option period shall not exceed 6 months. The Authority may exercise any ~~the~~ option by written notice to the Contractor within 60 days.

6. INVOICING AND PAYMENT

(a) Invoices may be submitted once per month, and marked “original” to the attention of:

Accounts Payable
 CMTA
 P.O. Box 6308
 Austin, Texas 78762-6308

(b) Payment shall be made within the time period allowed by law through the Texas Prompt Payment Act - Texas Government Code 2251.021(b). A prompt payment discount may be taken if offered and determined to be advantageous by the Authority.

(c) The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Authority when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either \$1,000 or 50% of the total amount of this contract.

7. INSURANCE

Contractor shall furnish proof of Authority-stipulated insurance requirements specified below. Proof of insurance shall be in the form of a certificate executed by an approved insurance company authorized to do business in the State of Texas. The Authority’s insurance requirements are:

(a) The Contractor shall carry and pay the premiums for insurance of the types and in the amounts stated below. ~~The Authority shall be endorsed as an ADDITIONAL INSURED by the Contractor with respect to the contract.~~ In any event, the Contractor shall carry and pay the premiums for insurance of the types and the amounts of not less than the following:

(1) Commercial General Liability Insurance Coverage with limits of not less than One Million and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage. Such coverage as herein provided shall be extended for and endorsements included as follows:

(i) Extended Coverages.

(A) Contractual Liability covering the Contractor's obligations herein.

(B) Personal Injury Liability extended to claims arising from employees of the Contractor and the Authority.

(ii) Endorsements Included. **The Authority named as ADDITIONAL INSURED.**

The Contractor shall cause its insurance company to endorse the Contractor's policy to waive subrogation against Capital Metropolitan Transportation Authority, its directors, officers, employees, agents, successors and assigns.

(2) Workers' Compensation Insurance: Statutory Workers' Compensation coverage in the State of Texas. Employers Liability Insurance with minimum limits of liability of One Million and No/100 Dollars (\$1,000,000). The Contractor shall cause its insurer for Worker's Compensation Insurance to endorse the Contractor's policy to **waive subrogation against Capital Metropolitan Transportation Authority**, its directors, officers, employees, agents, successors and assigns for any and all claims incurred by the Contractor's employees which arise out of the work under this contract.

(3) Automobile Liability Insurance covering all owned, hired and non-owned automobiles used in connection with work with limits not less than One Million and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage. If the Contractor uses the delivery services of a common carrier, then the Automobile Liability insurance will not be required. If the Contractor uses personnel and vehicles provided by the Contractor, then Automobile Liability will be required. Such coverage as herein provided shall **include the Authority as an ADDITIONAL INSURED.**

The Contractor shall cause its insurance company to endorse the Contractor's policy to waive subrogation against Capital Metropolitan Transportation Authority, its directors, officers, employees, agents, successors and assigns.

(4) Railroad Liability Coverage. Railroad liability coverage with limits not less than One Hundred Million and No/100 Dollars (\$100,000,000) including One Million Dollars (\$1,000,000) of self-insured retention (SIR) or less. The Authority will fund any reasonable and appropriate Self Insurance Retention (SIR) losses under the Railroad Liability Policy as long as claims are reported to, and administered by, the Authority's retained Third Party Administrator (TPA) and, provided the total of such claims do not exceed One Million Dollars (\$1,000,000) per claim. The Authority shall be endorsed as a NAMED INSURED by the Contractor on this policy. ~~The Contractor will be responsible for the costs of any and all claims under the Self Insured Retention (SIR).~~

(5) Property Insurance Coverage: Property Insurance in the amount of Thirty-Three Million Dollars (\$33,000,000) listing the DMUs as the covered property.

(b) All required insurance shall be written by an approved insurance company authorized to do business in the State of Texas.

(c) Proof that insurance coverage exists shall be furnished to the Authority by way of a Certificate of Insurance before any part of the contract work is started. The Certificate shall certify the Authority as an ADDITIONAL INSURED with a provision that in case of cancellation or any material change in the coverages stated above, the Authority shall be notified no less than thirty (30) days prior to any such change. The Contractor shall be liable for his subcontractor's insurance coverages of the types and in the amounts stated above, and shall furnish the Authority with copies of such Certificates of Insurance. If any insurance coverage required to be provided by the Contractor is canceled, terminated, or modified so that the required insurance coverages are no longer in full force and effect, the Authority may terminate this contract or obtain insurance coverages equal to the required coverage, the full cost of which will be the responsibility of the Contractor and shall be deducted from any payment due Contractor.

(d) The Contractor and all of its insurers shall, in regard to the above ~~stated specified~~ insurance, waive all rights of recovery or subrogation against the Authority and the Authority's insurance companies.

~~(e) The Contractor shall indemnify and hold harmless the Authority and its agents, successors, and assigns from and against all injury, loss, damage, or claims of liability, including attorney's fees and disbursements, to any person (including employees of the Authority; Contractor's employees and Contractor's subcontractors and their employees; associates and other persons assisting the Contractor on a paid or voluntary basis) for injury to or death of the person. The Contractor shall also indemnify and hold harmless the Authority and its agents, successors, and assigns from any loss of or damage to property arising from, related to, or in connection with any negligent act, error or omission of the Contractor during the performance of this contract and the use of the premises incident to the contract.~~

~~(f) The Contractor shall defend all suits brought upon the claims described in Section (e) above and pay all costs and expenses incident to the suits. The Authority shall have the right, at its own expense, to participate in the defense in any suit without relieving the Contractor of any obligation described above.~~

~~(g) The Authority will give the Contractor prompt notice in writing of the institution of any suit or proceeding and permit the Contractor to defend same and will give all needed information to do so. The Contractor shall similarly give the Authority immediate notice of any claim arising out of the performance of the contract. The Contractor shall furnish immediately to the Authority copies of all pertinent papers received by the Contractor regarding the suit, action or claim.~~

(h) If any part of the contract is sublet, the Contractor shall provide the Authority evidence of subcontractors insurance currently in place in the form of an insurance certificate. The Authority may require subcontractors to obtain insurance up to the limits required of the Contractor. In the event a subcontractor is unable to furnish insurance in the limits required under the contract, the Contractor shall

endorse the subcontractor as an ADDITIONAL INSURED on Contractor's policies.

(i) All insurance required to be maintained or provided by the Contractor shall be with companies and through policies approved by the Authority. The Authority reserves the right to inspect in person, prior to the commencement of the contract work, all of the Contractor's insurance policy required under this contract.

(j) If the Contractor has procured insurance at the time of the Contractor's submission of his bid, proof of the required insurance should be submitted with the Contractor's bid or proposal. Alternatively, the Contractor is requested to submit evidence of a commitment from an insurance company or companies, or a duly licensed agent, that the Contractor has made arrangements for the required insurance. If the bid or proposal is considered for award, and the Contractor has not previously furnished either the proof of insurance or evidence of commitment, the Contractor will be required to provide proof of the insurance or evidence of a commitment within five (5) days of request. If the Contractor is awarded the bid, and has submitted evidence of commitment rather than proof of the required insurance, the Contractor must furnish proof of the required insurance within five (5) days of the award of the contract. Certificate of Insurance must indicate the contract number and description. The insurance certificate should be mailed to the attention of the buyer who made the request.

(k) The above requirements only represent the minimum insurance coverage acceptable to the Authority and these requirements are not intended to represent the maximum risk involved or the maximum liability of the Contractor.

(l) The Contractor shall be responsible for setting its own requirements, if any, for the kind and amounts of insurance to be carried by its subcontractors in excess of the insurance required by the Authority. No delay in the work caused by the Contractor's enforcements of its subcontractor's insurance requirements shall be excusable delay in the contract.

(m) The Contractor is responsible for any and all costs to repair all damages for an amount not to exceed \$25,000 per incident.

(n) The Authority retains the option to provide the following insurance coverage with respect to this contract. If the Authority decides to procure these coverages directly, then insurance items #4 & #5 in the above requirements, will not be required of the Contractor.

1. Authority ~~Required~~ Provided Insurance

If the Authority decides to obtain such insurance, the Authority shall obtain, at its cost and expense the following insurance coverage:

(a) Railroad Liability Coverage: Railroad liability coverage with limits not less than One Hundred Million and No/100 Dollars (\$100, 000, 000) including One Million Dollars (\$1,000,000) of Self Insured Retentions (SIR). **The**

Authority will be responsible for the costs of any and all claims under the Self Insured Retentions (SIR).

(b) The Contractor shall be endorsed as a NAMED INSURED by the Authority on this Policy.

(c) Property Insurance Coverage: Property insurance in the amount of Thirty-Three Million Dollars (\$33, 000, 000) listing the DMUs as the covered property.

2. Insurance Reporting Requirements

If Capital Metro provides any insurance under this contract the Contractor shall:

(a) be responsible for providing written notification within a 24-hour period of any accident or physical damage and/or personal loss resulting from any accident or incident occurring under the execution of this contract. An accident includes any claim or incidence of personal loss or physical contact that occurs between a vehicle and any other object, vehicle, or person. For additional details, see Attachment 1 - Rail Accident/Incident Notification Policy and Attachment 2 - Accident Definitions and Criteria.

(b) be responsible for providing an electronic copy of the operator and supervisor reports to Capital Metro Risk Management within a 24-hour period of any accident or incident (Email: ~RiskManagementTeam@capmetro.org; Fax: 512-369-6007). The signed, original operator and supervisor reports must be forwarded to Capital Metro within two business days. Both reports must include an accident sketch detailing the specific facts of the accident, including, but not limited to the:

- (1) date and time of accident
- (2) location of accident
- (3) accident description
- (4) parties involved and contact information
- (5) individuals injured and/or transported
- (6) passenger and witness comment cards
- (7) photos and videos

(c) For additional details and requirements, see Attachment 1 – Rail Accident/Incident Notification Policy. Contractor will follow the accident/incident criteria requirements as outlined in Attachment 2 – Accident Definitions and Criteria. The Authority may revise the protocols at any time.

8. REPRESENTATIONS

Contractor represents that the Services shall be performed in conformity with the descriptions and other data set forth in this contract and with sound professional principles and practices in accordance with accepted industry standards, and that work performed by Contractor's personnel shall reflect sound professional knowledge, skill and judgment. If any breach of the applicable standard of professional care is dis-

covered by the Authority during the process of the work or within one year after acceptance of the work by the Authority, Contractor shall again cause the nonconforming or inadequate Services to be properly performed at Contractor's sole expense and shall reimburse for costs directly incurred by the Authority as a result of reliance by the Authority on services failing to comply with the applicable standard of professional care.

9. INDEPENDENT CONTRACTOR

Contractor's relationship to the Authority in the performance of this Agreement is that of an independent contractor. The personnel performing services under this Agreement shall at all times be under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of the Authority. Contractor shall be fully liable for all acts and omissions of its employees, subcontractors, and their suppliers and shall be specifically responsible for sufficient supervision and inspection to assure compliance in every respect with contract requirements. There shall be no contractual relationship between any subcontractor or supplier of Contractor and the Authority by virtue of this contract. No provision of this contract shall be for the benefit of any party except the Authority and Contractor. Contractor shall pay wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as Social Security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

10. COMPOSITION OF CONTRACTOR

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

11. SUBCONTRACTORS AND OUTSIDE CONSULTANTS

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to such individuals or firms as were specifically identified and agreed to by the Authority in connection with the award of this contract. Any substitution in such subcontractors, associates, or consultants will be subject to the prior approval of the Authority.

12. PERSONNEL ASSIGNMENTS

(a) Contractor shall perform the Services in an orderly and workmanlike manner, and shall employ persons skilled and qualified for the performance of the Services assigned to such persons under the contract. The Authority will have the right to review the experience and personnel records of each candidate, and approve assignments of Contractor's personnel.

(b) Contractor certifies that contractor has established a criminal history background policy that complies with guidance issued by the U.S. Equal Employment Opportunity Commission and that contractor conducts criminal history checks on its assigned personnel in accordance with such policy to identify, hire and assign personnel to work on this

contract whose criminal backgrounds are appropriate for the work being performed, considering the risk and liability to the contractor and the Authority. The Authority reserves the right to require contractor to disclose any criminal or military criminal convictions of assigned personnel and the right to disapprove the use of assigned personnel with criminal or military convictions.

(c) Contractor represents and warrants that all ~~contractor~~ Contractor employees in driving positions (that includes any person that may at any time operate a Capital Metro or Contractor vehicle) have held a valid driver's licenses for at least the past five (5) years, and ~~contractor~~ Contractor employees in non-driving positions (this includes any person that may at any time operate any Contractor vehicle with Capital. Metro's branding (e.g. maintenance clerk may drive a non-revenue support vehicle) have held a driver's license for at least the past three (3) years.

(d) Contractor shall provide a list of candidates to be used to provide the Services and shall certify that a criminal history background check has been completed within the preceding 6 month period. Criminal background checks shall include the following:

(1) State Criminal History: Contractor shall re-search criminal history, covering all jurisdictions within the state, including local counties and municipalities.

(2) Out of State Criminal History: Contractor shall research criminal history, including state driving records (where applicable), for all 50 states.

(e) Military Discharge: For any candidates that have served in the military, ~~contractor~~ Contractor shall review the DD Form 214 "Certificate of Release or Discharge from Active Duty" (Long Form).

(f) Motor vehicle driving record for the candidate's entire driving history

(g) Sex Offender Registry Check and,

(h) Social Security Number Verification

(i) Verification of legal work status in the United States.

This contract may include services in the following job categories. For each of the job categories, Contractor shall disclose the type of offense to the Authority according to the timetable below:

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Job Position/Category	Offense	Type	CMTA Action Required
Employees who operate or maintain a Capital Metro vehicle with Regular Contact with the Public	Crimes Against the Person (other than sex offenses)	Felony	Submit to Capital Metro for review if less than 10 years from date of release
		Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
		Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
	Crimes Against the Person - Sex Crimes	All	Submit to Capital Metro for review
	Crimes Against Property	Felony Only	Submit to Capital Metro for review if less than 10 years from date of release
	Drug Crimes	Felony	Submit to Capital Metro for review if less than 10 years from date of release
		Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
		Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
	Driving Offenses - DWI/DUI or other "serious driving offense"	Class A or B Misdemeanor	Disqualified if 7 years or less from date of conviction or deferred adjudication/ Submit to Capital Metro for review if between 7-10 years since conviction or deferred adjudication or more than 2 convictions in a lifetime
		Class C Misdemeanor	Disqualified if more than 2 moving violations in the past 5 years (Any more than one driving safety course taken for a moving violation that appears on a five (5) year record will be treated as a moving violation and will count against the applicant)
Job Position/Category	Offense	Type	CMTA Action Required
Employees who operate and maintain a Capital Metro vehicle with No regular contact with public	Crimes Against the Person (other than sex offenses)	Felony	Submit to Capital Metro for review if less than 10 years from date of release
		Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
		Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
	Crimes Against the Person - Sex Crimes	All	Submit to Capital Metro for review
	Crimes Against Property	Felony Only	Submit to Capital Metro for review if less than 10 years from date of release
	Drug Crimes	Felony	Submit to Capital Metro for review if less than 10 years from date of release
		Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
		Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction

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	Driving Offenses - DWI/DUI or other "serious driving offense"	Class A or B Misdemeanor	Disqualified if 7 years or less from date of conviction or deferred adjudication/ Submit to Capital Metro for review if between 7-10 years since conviction or deferred adjudication or more than 2 convictions in a lifetime
		Class C Misdemeanor	Disqualified if more than 2 moving violations in the past 5 years (Any more than one driving safety course taken for a moving violation that appears on a five (5) year record will be treated as a moving violation and will count against the applicant)

Job Position/Category	Offense	Type	CMTA Action Required
Employees whose Work Assignment is on Capital Metro Property	Crimes Against the Person (other than sex offenses)	Felony	Submit to Capital Metro for review if less than 10 years from date of release
		Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
		Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
	Crimes Against the Person (Sex Crimes)	All	Submit to Capital Metro for review
	Crimes Against Property	Felony	Submit to Capital Metro for review if less than 10 years from date of release
	Drug Crimes	Felony	Submit to Capital Metro for review if less than 10 years from date of release
		Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
		Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction

Job Position/Category	Offense	Type	CMTA Action Required
Management	Crimes Against the Person (other than sex offenses)	Felony	Submit to Capital Metro for review if less than 10 years from date of release
		Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
		Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
	Crimes Against the Person (Sex Crimes)	All	Submit to Capital Metro for review
		Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
		Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
	Drug Crimes	Felony	Submit to Capital Metro for review if less than 10 years from date of release
		Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
	Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction	

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Job Position/Category	Offense	Type	CMTA Action Required
Employees who have one-on-one or in-person contact with Capital Metro customers or employees	Crimes Against the Person (other than sex offenses)	Felony	Submit to Capital Metro for review if less than 10 years from date of release
		Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
		Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
	Crimes Against the Person (Sex Crimes)	All	Submit to Capital Metro for review
Job Position/Category	Offense	Type	CMTA Action Required
Security Sensitive Employees or Contractor Employees who have access to employee information	Crimes Against Property (specifically financial crimes, fraud, deception)	Felony	Submit to Capital Metro for review if less than 10 years from date of release
		Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
		Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction

Contractor may not assign an employee to provide Services if the employee has any conviction in the applicable job categories listed above, unless an exception is granted by the Authority in accordance with subsection (d) below.

(d) Contractor may request the Authority perform an individual assessment of a candidate with a criminal conviction meeting one of the above categories. In conducting an individual assessment the Authority's review will include, but not be limited to, the following factors:

- (1) The nature and gravity of the offense or conduct
- (2) The degree of harm caused by the offense or conduct
- (3) The time that has elapsed since the conviction or completion of probation or jail time
- (4) The nature of the job sought, including the job duties, environment and level of supervision
- (5) Any incorrect criminal history
- (6) Wrongful identification of the person
- (7) The facts and circumstances surrounding the offense or conduct
- (8) The number of offenses for which the candidate was convicted
- (9) The subsequent conviction for another relevant offense

(10) The age of the person at the time of conviction or completion of probation or jail time

(11) Evidence that the person performed the same type of work, post-conviction, with the same or different employer, with no known incidents of criminal conduct.

(12) The length and consistency of employment history before and after the conviction in a similar field as the current position sought.

(13) Rehabilitation efforts, e.g., education, treatment, training

(14) Employment or character references and any other information regarding fitness for the particular position

(15) Whether the person is bonded or licensed under any federal, state or local program or any licensing authority

(16) The person's statement of the circumstances surrounding the offense and conviction and relevant factors is consistent with publicly available record related to the crime and conviction, and

(17) Any other factors deemed relevant in the consideration of a particular assessment.

(e) At the time a request is made for an individual assessment, ~~contractor~~ Contractor must include the following documentation:

- (1) the candidate's application/resume;

(2) a copy of the criminal conviction history, including those tried in a military tribunal;

(3) available court information related to the conviction;

(4) any publicly available information related to the offense and conviction;

(5) a statement from the candidate addressing any/all factors set forth above and explaining why the person is qualified for the assignment notwithstanding the conviction; and

(6) A statement from the candidate explaining why the person is an acceptable risk for the work to be performed by the candidate.

(f) The Authority will provide a written decision to Contractor within five (5) working days of receipt of all required documentation from Contractor.

(g) Contractor will conduct annually a new criminal history background checks on all assigned personnel to ensure the preceding criterion are still met by the assigned personnel and notify the Authority if an employee has a subsequent conviction (or change in driving record, as applicable) that requires further review by the Authority using the criterion set forth above. The Authority reserves the right to request that the assigned individual be removed from performing work under this contract.

(h) Contractor shall provide, annually, to Capital Metro the background check methodology used. Capital Metro reserves the right to review and approve the methodology.

(i) Contractor shall have a policy requiring employees to self-report criminal and driving record violations (arrests, convictions, deferred adjudications). Following such report, if the Contractor wishes to retain the employee in service, the request must be made to the Capital Metro Risk Assessment Team.

(j) Contractor shall complete and submit to other current and past Capital Metro contractors the Personnel Reference Check Form Attachment #43 for any applicants who have employment history with such contractors. Contractor shall submit a new hire list to Capital Metro on a monthly basis by the 15th of the month.

13. BADGES AND ACCESS CONTROL DEVICES

(a) Each ~~contractor~~ Contractor employee and subcontractor shall be required to wear a Capital Metro Contractor Photo Identification Badge at all times while on the Authority's premises. The badge will be provided by Capital Metro. If ~~contractor~~ Contractor employee or subcontractor loses or misplaces their badge, ~~contractor~~ Contractor will be charged a \$50.00 replacement fee for each lost or misplaced badge. This fee will be deducted from the ~~contractor~~ Contractor invoice. If ~~contractor~~ Contractor fails to return all badges provided for their employees or subcontractors upon completion of the contract or termination of the ~~contractor's~~ Contractor's employee or release of a subcontractor, ~~contractor~~ Contractor

will pay a \$50.00 per badge fee deducted from their final invoice. Badges should be returned to the Project Manager. All requests for new and replacement badges must be submitted in writing by the Project Manger to the Manager of Security or Project Manager of Security

(b) Access Control Devices will be issued to ~~contractor~~ Contractor employees and subcontractors as necessary to perform the duties specified in the contract. Access Control Devices are not transferable between ~~contractor~~ Contractor employees or subcontractors. Contractor employees and subcontractors are prohibited from loaning Access Control Devices or providing access to an unauthorized person into restricted areas without prior arrangements with the Project Manager and the Manager of Security or the Project Manager of Security. Lost Access Control Devices must be reported to the Project Manager, the Manager of Security or the Project Manager of Security immediately. If ~~contractor~~ Contractor fails to return all Access Control Devices provided for their employees or subcontractors upon completion of the contract or termination of the ~~contractor's~~ Contractor's employee or release of the ~~contractor~~ Contractor the replacement cost shall be calculated at current market value to include labor and materials. Replacement key costs shall be deducted from the ~~contractor~~ Contractor current or final invoice. Misuse of Capital Metro key(s) may result in termination of the contract.

14. CHANGES

(a) Offerors are expected to examine the Schedule, Solicitation Instructions and Conditions, Contractual Terms and Conditions, all drawings, specifications, the Statement of Work, and all other provisions of, and exhibits to, the solicitation, whether incorporated by reference or otherwise, prior to the submission of offers. Failure to do so shall be at the offeror's risk.

(b) The Authority may, at any time, by written order, make changes within the general scope of the contract in the services to be performed. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any services under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be asserted in writing within thirty (30) days from the date of receipt by the Contractor of the notification of change unless the Contracting Officer grants a further period of time before the date of final payment under the contract.

(c) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Authority.

(d) **Equitable Adjustments**. Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in this subsection (d) for work involving contemplated changes covered by the request. Contractor shall submit claims for equitable adjustment arising out of changes in the original contract requirements to the Contracting Officer with 30 days of determination that a change has occurred. Contractor shall submit the claim in the format prescribed by the Contracting Officer. If a

mutually acceptable agreement cannot be reached, the Contracting Officer may determine the price unilaterally, subject to Section 44 herein.

15. TERMINATION FOR DEFAULT

(a) The Authority may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in either one of the following circumstances:

(1) If the Contractor fails to make delivery of the supplies or to perform the service within the time specified herein or any extension thereof; or

(2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this 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 Authority may authorize in writing) after receipt of notice from the Authority specifying such failure.

(b) In the event the Authority terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Authority for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent, if any, it has not been terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the 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. Such causes may include, but are not restricted to, the following: acts of God or of the public enemy, acts of the Authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; provided, however, in every case the failure to perform must be 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 the Contractor and subcontractor and without the fault or negligence of either of them, the 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 the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Authority, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority (i) any completed supplies and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as

has been terminated; and the Contractor shall, upon direction of the Authority, protect and preserve property in possession of the Contractor in which the Authority has an interest. Payment for completed supplies delivered to and accepted by the Authority shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Authority and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the Authority. Failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the disputes clause of this contract. The Authority may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Authority determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be those provided in the Termination for the Convenience of the Authority Clause hereof. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the disputes clause of this contract.

(f) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. Time is of the essence for all delivery, performance, submittal, and completion dates in this contract.

(g) As used in paragraph (c) of this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

16. TERMINATION FOR CONVENIENCE

The Authority may, whenever the interests of the Authority so require, terminate this contract, in whole or in part, for the convenience of the Authority. The Authority shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

(a) The Contractor shall 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. The Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Authority may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Authority. 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.

(b) The Authority may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority: (i) any completed supplies; and (ii) such partially completed supplies and materials, parts,

tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") 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 the Authority, protect and preserve property in the possession of the Contractor in which the Authority has an interest. If the Authority does not exercise this right, the Contractor shall use its best efforts to sell such supplies and manufacturing materials.

(c) The Authority shall pay the Contractor the following amounts:

(1) Contract prices for supplies or services accepted under the contract;

(2) Costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages), less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(3) Costs of settling and paying claims arising out of the termination of subcontracts (these costs must not include costs paid in accordance with subparagraph (2) of this paragraph); and

(4) The reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts there under, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract.

(5) The total sum to be paid the Contractor under this section shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under this paragraph, and the contract price of work not terminated.

17. CONTRACTOR CERTIFICATION

The Contractor certifies that the fees in this Agreement have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

18. DRAWINGS AND OTHER DATA

All designs, drawings, specifications, notes, documents, reports, data, graphs, and other works developed in the performance of this contract shall become the sole property of the Authority and may be used in any manner by the Authority and without additional compensation to the Contractor.

The Authority shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights or establish any claim under the design patent or copyright laws. The Contractor, for a period of three (3) years after completion of the project, agrees to retain all works developed in the performance of the contract and to furnish all retained works to the Authority upon the Authority's request. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

19. STANDARDS OF PERFORMANCE

The Contractor shall perform all work hereunder in compliance with all applicable federal, state, and local laws and regulations. The Contractor shall use only licensed personnel to perform work required by law to be performed by such personnel.

20. INSPECTIONS AND APPROVALS

(a) All work performed by Contractor or its subcontractors or consultants shall be subject to the inspection and approval of the Authority at all times, but such approval shall not relieve Contractor of responsibility for the proper performance of the Services. Contractor shall provide sufficient, safe, and proper facilities at all times for such inspection of the work and shall furnish all information concerning the work and give the Authority or its representatives free access at all reasonable times to the facilities where the Services are performed.

(b) "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(c) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during contract performance and for as long afterwards and the contract requires.

(d) The Authority has the right to inspect and test all services called for by this contract, to the extent practicable, at all times and places during the term of the contract. The Authority shall perform inspections and tests in a manner that will not unduly delay the work.

(e) If any of the services do not conform with contract requirements, the Authority may require the Contractor to perform the services again in conformity with the contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, the Authority may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails promptly to perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Authority may (1) by contract or otherwise, perform the services

and charge to the Contractor any cost incurred by the Authority that is directly related to the performance of such service or (2) terminate the contract for default.

21. SUSPENSION OF WORK

(a) The Authority may order the Contractor in writing to suspend all or any part of the work for such period of time as the Authority determines to be appropriate for the convenience of the Authority.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended or delayed by an act of the Authority in the administration of this contract, or by the Authority's failure to act within the time specified in this contract (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Authority in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this clause shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this clause.

22. FEDERAL, STATE AND LOCAL TAXES

Personal property furnished or used in this contract will be exempt from the Limited Sales and Excise and Use Tax imposed, Texas Tax Code, Section 151.009, and certain other taxes. Contractor shall obtain instructions for the issuance of and exemption certificate from the local office of the State Comptroller of Public Accounts or other tax offices. Any such taxes included on any invoice or voucher received by the Authority shall be deducted from the amount of the invoice or voucher for purposes of payment.

23. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. Offeror shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, promotion or transfer; recruitment or recruitment advertising;

layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall retain and make available to the Authority records showing compliance with this Section and with Section 38, Examination and Retention of Records, for three (3) years after completion of a project, or until an audit is completed and all questions, claims, disputes, negotiations, and other actions arising therefrom are resolved, whichever occurs last. Additional retention periods may be required as appropriate and stipulated in writing.

24. CONFLICT OF INTEREST

(a) Reference is made to Exhibit B, Representations and Certifications, Code of Conduct, which is incorporated herein and made a part of this contract. Capitalized terms used in this clause and not otherwise defined shall have the meanings as described to them in the Code of Conduct.

(b) Contractor represents that no Employee has a Substantial Interest in Contractor or this contract, which Substantial Interest would create or give rise to a Conflict of Interest. Contractor further represents that no person who has a Substantial Interest in the Contractor and is or has been employed by the Authority for a period of two (2) years prior to the date of this contract has or will (1) participate, for Contractor, in a recommendation, bid, proposal or solicitation on any Authority contract, procurement or personnel administration matter, or (2) receive any pecuniary benefit from the award of this contract through an ownership of a Substantial Interest (as that term is defined in Section II, subsections (1) and (3) of the Code of Conduct) in a business entity or real property.

(c) Contractor agrees to ensure that the Code of Conduct is not violated as a result of Contractor's activities in connection with this contract. Contractor agrees to immediately inform the Authority if it becomes aware of the existence of any such Substantial Interest or Conflict of Interest, or the existence of any violation of the Code of Conduct arising out of or in connection with this contract.

(d) The Authority may, in its sole discretion, require Contractor to cause an immediate divestiture of such Substantial Interest or elimination of such Conflict of Interest, and failure of Contractor to so comply shall render this contract voidable by the Authority. Any willful violation of these provisions, creation of a Substantial Interest or existence of a Conflict of Interest with the express or implied knowledge of Contractor shall render this contract voidable by the Authority.

(e) In accordance with section 176.006, Texas Local Government Code, "vendor" is required to file a conflict of interest questionnaire within seven business days of becoming aware of a conflict of interest under Texas law. The conflict of interest questionnaire can be obtained from the Texas Ethics Commission at www.ethics.state.tx.us. The questionnaire shall be sent to the Authority's Contract Administrator.

25. GRATUITIES

The Authority may cancel this Agreement, without liability to Contractor, if it is found that gratuities in the form of enter-

tainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative to any Authority official or employee with a view toward securing favorable treatment with respect to the performance of this Agreement. In the event this Agreement is canceled by the Authority pursuant to this provision, the Authority shall be entitled, in addition to any other rights and remedies, to recover from the Contractor a sum equal in amount to the cost incurred by the Contractor in providing such gratuities.

26. PUBLICATIONS

All published material and written reports submitted under this project must be originally developed material unless otherwise specifically provided in the contract document. When material, not originally developed, is included in a report, it shall have the source identified. This provision is applicable when the material is in a verbatim or extensive paraphrased format.

27. REQUEST FOR INFORMATION

(a) The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this contract to any party other than the Authority and its authorized agents except as otherwise provided by this contract or after obtaining the prior written permission of the Authority.

(b) This contract, all data and other information developed pursuant to this contract shall be subject to the Texas Public Information Act. The Authority shall comply with all aspects of the Texas Public Information Act.

(c) The Contractor is instructed that any requests for information regarding this contract and the Deliverables shall be referred to the Authority.

28. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

(a) All documentation related to or prepared in connection with any proposal, including the contents of any proposal contracts, responses, inquiries, correspondence, and all other material submitted in connection with the proposal shall become the property of the Authority upon receipt.

(b) All documents, reports, data, graphics and other materials produced under this contract shall become the sole possession of the Authority upon receipt and payment, subject only to Contractor's professional obligation to maintain copies of its work product.

29. LIMITATION OF LIABILITY

In no event shall the Authority or its officers, directors, agents or employees be liable in contract or tort, to Contractor or its subcontractors for special, indirect, incidental or consequential damages, resulting from the Authority's performance, nonperformance, or delay in performance of its obligations under this contract, or the Authority's termination of the contract with or without cause, or the Authority's suspension of the Services. This limitation of liability shall not apply to in-

tentional tort or fraud. Contractor shall include similar liability provisions in all its subcontracts.

30. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS

Contractor agrees that it shall be in compliance with all laws, statutes, and other governmental provisions, regulations or standards prevailing during the term of this Agreement. Contractor shall obtain any permits or licenses necessary for the performance of the Services.

34. INTENTIONALLY DELETED CLAIMS

~~In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Contractor, the Contractor shall give written notice thereof, to the Authority within three (3) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the name and address of the person, firm, corporation, or other entity making such claim or instituting or threatening to institute any type of action or proceeding; the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the attention of the President/CEO, Capital Metropolitan Transportation Authority, 2010 East Fifth Street, Austin, Texas 78702.~~

32. ASSIGNMENT

This contract shall be binding upon the parties, their successors, and assignees; provided, however, that neither party shall assign its obligations or delegate its duties hereunder without the prior written consent of the other. Any attempted assignment or delegation without written consent shall be void and ineffective.

33. LICENSES AND PERMITS

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses, permits, and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to the performance of work or to the products or services to be provided under this contract including, but not limited to, any laws or regulations requiring the use of licensed subcontractors to perform parts of the work.

34. NOTICE OF LABOR DISPUTES

(a) 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 shall give notice, including all relevant information, to the Authority.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract under which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened

by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

35. PUBLICITY RELEASES

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this contract or the work hereunder which the Contractor or any of its subcontractors desires to make for the purposes of publication in whole or in part, shall be subject to approval by the Authority prior to release.

36. INDEMNITY

~~EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR MALICIOUS ACT OF THE AUTHORITY,~~ CONTRACTOR HEREBY AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE AUTHORITY AND EACH OF ITS AFFILIATES AND EACH OF THE AUTHORITY'S AND SUCH AFFILIATES' OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, AND ASSIGNS (THE AUTHORITY AND EACH SUCH PERSON OR ENTITY IS AN "**INDEMNIFIED PARTY**") AGAINST ANY AND ALL DAMAGES **BUT ONLY TO THE EXTENT** RESULTING FROM, RELATED TO, ARISING OUT OF OR ATTRIBUTABLE TO ANY ACTION, INACTION, BREACH, INACCURACY, FAILURE TO PERFORM, FAILURE TO COMPLY, DEFAULT, ERROR, VIOLATION, INTERFERENCE WITH, TERMINATION OR CANCELLATION BY OR THROUGH THE CONTRACTOR OR ANY SUBCONTRACTOR, OFFICER, DIRECTOR, EMPLOYEE, AGENT, REPRESENTATIVE, SUCCESSOR, OR ASSIGNEE, OF THE CONTRACTOR OR ANY SUBCONTRACTOR OF THE CONTRACTOR OR ANY LOSS OF OR DAMAGE TO ANY PROPERTY OR PERSONAL INJURY OR DEATH RELATED TO, ARISING OUT OF OR ATTRIBUTABLE TO THIS CONTRACT, ANY SERVICES OR WORK PERFORMED UNDER OR THAT WERE TO BE PERFORMED UNDER THIS CONTRACT, ANY ACCESS TO PROPERTY, ANY CAPITAL METRO PROPERTY (AS DEFINED IN SECTION 52 OF THIS CONTRACT), PERFORMANCE OF CONTRACTOR'S OBLIGATIONS UNDER THIS CONTRACT OR OTHERWISE **DURING THE TERM OF THIS CONTRACT.**

FOR PURPOSES OF THIS CONTRACT **SECTION 36**, (i) "**DAMAGES**" MEANS ANY AND ALL ~~DIRECT OR INDIRECT~~ LOSSES, DAMAGES (INCLUDING, WITHOUT LIMITATION, INCIDENTAL, CONSEQUENTIAL, LOST PROFITS, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES), LIABILITIES, PAYMENTS, OBLIGATIONS, DEFICIENCIES, CLAIMS, ACTIONS, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES OF WHATEVER KIND, INCLUDING, WITHOUT LIMITATION, FEES AND EXPENSES OF ATTORNEYS, ACCOUNTANTS, AND OTHER PROFESSIONAL ADVISORS AND OF EXPERT WITNESSES AND OTHER COSTS (INCLUDING, WITHOUT LIMITATION, THE ALLOCABLE PORTION OF ANY INDEMNIFIED PARTY'S INTERNAL COSTS) RESULTING FROM, RELATED TO, ARISING OUT OF, ATTRIBUTABLE TO WITH ANY ACTION OR THREATENED ACTION OF ANY KIND OR NATURE WHATSOEVER, **PROVIDED, HOWEVER (A) DAMAGES EX-**

CLUDES ALL LOSSES, LIABILITIES, COSTS, EXPENSES OR CLAIMS OF WHATEVER KIND, WITHOUT LIMITATION, TO THE EXTENT COVERED BY ANY APPLICABLE INSURANCE POLICY, INCLUDING THE AUTHORITY FUNDED SIR, AND (B) ANY INCIDENTAL, CONSEQUENTIAL, LOST PROFITS, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES SHALL BE LIMITED TO THREE MILLION DOLLARS (\$3,000,000) IN THE AGGREGATE (IN EXCESS OF ANY APPLICABLE INSURANCE COVERAGE, INCLUDING THE AUTHORITY FUNDED SIR) NOTWITHSTANDING ANYTHING CONTAINED IN THIS SECTION 36 TO THE CONTRARY (ii) "**LIABILITIES**" MEANS ANY AND ALL LIABILITIES OR OBLIGATIONS, WHETHER KNOWN OR UNKNOWN, ASSERTED OR UNASSERTED, ABSOLUTE OR CONTINGENT, MATURED OR UNMATURED, CONDITIONAL OR UNCONDITIONAL, LATENT OR PATENT, ACCRUED OR UNACCRUED, LIQUIDATED OR UNLIQUIDATED, OR DUE OR TO BECOME DUE, (iii) "**ACTION**" MEANS ANY ACTION, APPEAL, PETITION, PLEAS, CHARGE, COMPLAINT, CLAIM, SUIT, DEMAND, LITIGATION, ARBITRATION, MEDIATION, HEARING, INQUIRY, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING, (iv) "**THREATENED**" MEANS A DEMAND OR STATEMENT HAS BEEN MADE (ORALLY OR IN WRITING) OR A NOTICE HAS BEEN GIVEN (ORALLY OR IN WRITING), OR ANY OTHER EVENT HAS OCCURRED OR ANY OTHER CIRCUMSTANCES EXIST THAT WOULD LEAD A PRUDENT PERSON OR ENTITY TO CONCLUDE THAT AN ACTION OR OTHER MATTER IS LIKELY TO BE ASSERTED, COMMENCED, TAKEN OR OTHERWISE PURSUED IN THE FUTURE, (v) "**LAW**" MEANS ANY LAW (STATUTORY, COMMON, OR OTHERWISE), CONSTITUTION, TREATY, CONVENTION, ORDINANCE, EQUITABLE PRINCIPLE, CODE, RULE, REGULATION, EXECUTIVE ORDER, OR OTHER SIMILAR AUTHORITY ENACTED, ADOPTED, PROMULGATED, OR APPLIED BY ANY GOVERNMENTAL BODY, EACH AS AMENDED AND NOW AND HEREINAFTER IN EFFECT, (vi) "**GOVERNMENTAL BODY**" MEANS ANY LEGISLATURE, AGENCY, BUREAU, BRANCH, DEPARTMENT, DIVISION, COMMISSION, COURT, TRIBUNAL, MAGISTRATE, JUSTICE, MULTINATIONAL ORGANIZATION, QUASI-GOVERNMENTAL BODY, OR OTHER SIMILAR RECOGNIZED ORGANIZATION OR BODY OF ANY FEDERAL, STATE, COUNTY, MUNICIPAL, LOCAL, OR FOREIGN GOVERNMENT OR OTHER SIMILAR RECOGNIZED ORGANIZATION OR BODY EXERCISING SIMILAR POWERS OR AUTHORITY, (vii) "**ORDER**" MEANS ANY ORDER, RULING, DECISION, VERDICT, DECREE, WRIT, SUBPOENA, MANDATE, PRECEPT, COMMAND, DIRECTIVE, CONSENT, APPROVAL, AWARD, JUDGMENT, INJUNCTION, OR OTHER SIMILAR DETERMINATION OR FINDING BY, BEFORE, OR UNDER THE SUPERVISION OF ANY GOVERNMENTAL AUTHORITY, ARBITRATOR, OR MEDIATOR, (viii) "**PERMIT**" MEANS ANY PERMIT, LICENSE, CERTIFICATE, APPROVAL, CONSENT, NOTICE, WAIVER, FRANCHISE, REGISTRATION, FILING, ACCREDITATION, OR OTHER SIMILAR AUTHORIZATION REQUIRED BY ANY LAW, GOVERNMENTAL BODY, OR CONTRACT, ANY "PERSON" MEANS ANY INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION, ASSOCIATION, JOINT STOCK COMPANY, TRUST, ENTITY, JOINT VENTURE, LABOR ORGAN-

IZATION, UNINCORPORATED ORGANIZATION, OR GOVERNMENTAL BODY.

IF ANY ACTION IS COMMENCED THAT MAY GIVE RISE TO A CLAIM FOR INDEMNIFICATION (AN "INDEMNIFICATION CLAIM") BY ANY INDEMNIFIED PARTY AGAINST CONTRACTOR, THEN SUCH INDEMNIFIED PARTY WILL PROMPTLY GIVE NOTICE TO CONTRACTOR AFTER SUCH INDEMNIFIED PARTY RECEIVES NOTICE OF SUCH ACTION. FAILURE TO NOTIFY CONTRACTOR WILL NOT RELIEVE CONTRACTOR OF ANY LIABILITY THAT IT MAY HAVE TO ANY INDEMNIFIED PARTY, EXCEPT TO THE EXTENT THE DEFENSE OF SUCH ACTION IS MATERIALLY AND IRREVOCABLY PREJUDICED BY THE INDEMNIFIED PARTY'S FAILURE TO GIVE SUCH NOTICE.

CONTRACTOR WILL HAVE THE RIGHT TO DEFEND AGAINST AN INDEMNIFICATION CLAIM, WITH COUNSEL OF ITS CHOICE THAT IS SATISFACTORY TO THE INDEMNIFIED PARTY IF (I) WITHIN 10 DAYS FOLLOWING THE RECEIPT OF NOTICE OF THE INDEMNIFICATION CLAIM, THE CONTRACTOR NOTIFIES THE INDEMNIFIED PARTY IN WRITING THAT THE CONTRACTOR WILL INDEMNIFY THE INDEMNIFIED PARTY FROM AND AGAINST THE ENTIRETY OF ANY DAMAGES THE INDEMNIFIED PARTY MAY SUFFER RESULTING FROM, RELATING TO, ARISING OUT OF, OR ATTRIBUTABLE TO THE INDEMNIFICATION CLAIM, (II) THE CONTRACTOR PROVIDES THE INDEMNIFIED PARTY WITH EVIDENCE REASONABLY ACCEPTABLE TO THE INDEMNIFIED PARTY THAT THE CONTRACTOR WILL HAVE THE FINANCIAL RESOURCES TO DEFEND AGAINST THE INDEMNIFICATION CLAIM AND PAY, IN CASH, ALL DAMAGES THE INDEMNIFIED PARTY MAY SUFFER RESULTING FROM, RELATING TO, ARISING OUT OF, OR ATTRIBUTABLE TO THE INDEMNIFICATION CLAIM, (III) THE INDEMNIFICATION CLAIM INVOLVES ONLY MONEY DAMAGES AND DOES NOT SEEK AN INJUNCTION OR OTHER EQUITABLE RELIEF, (IV) SETTLEMENT OF, OR AN ADVERSE JUDGMENT WITH RESPECT TO, THE INDEMNIFICATION CLAIM IS NOT IN THE GOOD FAITH JUDGMENT OF THE INDEMNIFIED PARTY LIKELY TO ESTABLISH A PRECEDENTIAL CUSTOM OR PRACTICE MATERIALLY ADVERSE TO THE CONTINUING BUSINESS INTERESTS OF THE INDEMNIFIED PARTY, AND (V) THE CONTRACTOR CONTINUOUSLY CONDUCTS THE DEFENSE OF THE INDEMNIFICATION CLAIM ACTIVELY AND DILIGENTLY.

SO LONG AS THE CONTRACTOR IS CONDUCTING THE DEFENSE OF THE INDEMNIFICATION CLAIM IN ACCORDANCE WITH THE IMMEDIATELY PRECEDING PARAGRAPH THE INDEMNIFIED PARTY MAY RETAIN SEPARATE CO-COUNSEL AT ITS SOLE COST AND EXPENSE AND PARTICIPATE IN THE DEFENSE OF THE INDEMNIFICATION CLAIM, (II) THE INDEMNIFIED PARTY WILL NOT CONSENT TO THE ENTRY OF ANY ORDER WITH RESPECT TO THE INDEMNIFICATION CLAIM WITHOUT THE PRIOR WRITTEN CONSENT OF THE CONTRACTOR (NOT TO BE WITHHELD UNREASONABLY), AND (III) THE CONTRACTOR WILL NOT CONSENT TO THE ENTRY OF ANY ORDER WITH RESPECT TO THE INDEMNIFICATION CLAIM WITHOUT THE PRIOR WRITTEN CONSENT OF THE INDEMNIFIED PARTY (NOT TO BE WITHHELD UNREASONABLY, PROVIDED

THAT IT WILL NOT BE DEEMED TO BE UNREASONABLE FOR AN INDEMNIFIED PARTY TO WITHHOLD ITS CONSENT (A) WITH RESPECT TO ANY FINDING OF OR ADMISSION (1) OF ANY BREACH OR VIOLATION OF ANY LAW, ORDER OR PERMIT, (2) OF ANY VIOLATION OF THE RIGHTS OF ANY PERSON, OR (3) WHICH INDEMNIFIED PARTY BELIEVES COULD HAVE AN ADVERSE EFFECT ON ANY OTHER ACTIONS TO WHICH THE INDEMNIFIED PARTY OR ITS AFFILIATES ARE PARTY OR TO WHICH INDEMNIFIED PARTY HAS A GOOD FAITH BELIEF IT OR ANY OF ITS AFFILIATES MAY BECOME PARTY, OR (B) IF ANY PORTION OF SUCH ORDER WOULD NOT REMAIN SEALED). IF ANY CONDITION IN THE IMMEDIATELY PRECEDING PARAGRAPH IS OR BECOMES UNSATISFIED, (I) THE INDEMNIFIED PARTY MAY DEFEND AGAINST, AND CONSENT TO THE ENTRY OF ANY ORDER WITH RESPECT TO AN INDEMNIFICATION CLAIM IN ANY MANNER IT MAY DEEM APPROPRIATE (AND THE INDEMNIFIED PARTY NEED NOT CONSULT WITH, OR OBTAIN ANY CONSENT FROM, THE CONTRACTOR IN CONNECTION THEREWITH), (II) THE CONTRACTOR WILL JOINTLY AND SEVERALLY BE OBLIGATED TO REIMBURSE THE INDEMNIFIED PARTY PROMPTLY AND PERIODICALLY FOR THE DAMAGES RELATING TO DEFENDING AGAINST THE INDEMNIFICATION CLAIM, AND (III) THE CONTRACTOR WILL REMAIN JOINTLY AND SEVERALLY LIABLE FOR ANY DAMAGES THE INDEMNIFIED PARTY MAY SUFFER RELATING TO THE INDEMNIFICATION CLAIM TO THE FULLEST EXTENT PROVIDED IN THIS SECTION 36.

THE CONTRACTOR HEREBY CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY GOVERNMENTAL BODY, ARBITRATOR, OR MEDIATOR IN WHICH AN ACTION IS BROUGHT AGAINST ANY INDEMNIFIED PARTY FOR PURPOSES OF ANY INDEMNIFICATION CLAIM THAT AN INDEMNIFIED PARTY MAY HAVE UNDER THIS CONTRACT WITH RESPECT TO SUCH ACTION OR THE MATTERS ALLEGED THEREIN, AND AGREES THAT PROCESS MAY BE SERVED ON THE CONTRACTOR WITH RESPECT TO SUCH CLAIM ANYWHERE IN THE WORLD.

~~THE INDEMNIFICATION OBLIGATIONS AND RIGHTS PROVIDED FOR IN SECTION 36 OF THIS CONTRACT WILL BE APPLICABLE WHETHER OR NOT THE SOLE, JOINT, OR CONTRIBUTORY NEGLIGENCE OF ANY INDEMNIFIED PARTY IS ALLEGED OR PROVEN. THE CONTRACTOR AND THE AUTHORITY AGREE THAT ALL OF THE PROVISIONS OF THE IMMEDIATELY PRECEDING SENTENCE ARE CONSPICUOUS.~~

37. MAINTENANCE OF RECORDS

All associated records required by this contract or by law shall be maintained for three (3) years after completion of services, or until an audit is completed and all questions, claims, disputes, negotiations, and other actions arising therefrom are resolved, whichever occurs last. Additional retention periods may be required as appropriate and stipulated in writing.

38. EXAMINATION AND RETENTION OF RECORDS

(a) The Authority and its representatives shall have audit and inspection rights described below.

(b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price redeterminable contract, or any combination thereof, the Contractor shall maintain, and the Contracting Officer and its representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times at the Contractor's plants, or such parts thereof, as may be engaged in or maintain records in connection with the performance of this contract.

(c) If the Contractor submitted certified cost or pricing data in connection with the pricing of this contract or if the Contractor's cost of performance is relevant to any change or modification to this contract, the Authority and its representatives shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance of such contract, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.

(d) The materials described in (b) and (c), above, shall be made available at the office of the Contractor at all reasonable times for inspection, audit, or reproduction until the expiration of three (3) years from the date of final payment under this contract, except that if this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years after completion of services, or until an audit is completed and all questions, claims, disputes, negotiations, and other actions arising therefrom are resolved, whichever occurs last. Additional retention periods may be required as appropriate and stipulated in writing.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts exceeding \$25,000 hereunder, altered to reflect the proper identification of the contracting parties and the Authority under the prime contract.

39. EXCUSABLE DELAYS

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Authority in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and

without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless –

(1) the subcontracted supplies or services were obtainable from other sources;

(2) The Authority ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon the request of the Contractor, the Authority shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule or period of performance shall be revised, subject to the rights of the Authority under the Termination clause of this contract.

40. INTENTIONALLY DELETED LOSS OR DAMAGE TO PROPERTY

~~The Contractor shall be responsible for any loss or damage to property including money securities, merchandise, fixtures and equipment belonging to the Authority or to any other individual or organization, if any such loss or damage was caused by Contractor or any employee thereof, while such employee is on the premises of the Authority as an employee of the Contractor.~~

41. CONTRACTOR CONTACT/AUTHORITY DESIGNEE

The Contractor shall provide the Authority with a telephone number to ensure immediate communication with a person (not a recording) anytime during contract performance. Similarly, the Authority shall designate an Authority representative who shall be similarly available to the Contractor.

42. QUALITY ASSURANCE

A daily review of the Contractor's scheduled work will be performed by the Authority. If work is deemed incomplete or unacceptable in any way, the Authority will determine and cause and require the Contractor to take corrective measures in accordance with the terms of the contract.

43. NONWAIVER OF RIGHTS

Failure or delay of the Authority (a) to insist in any one or more instances upon performance of any of the terms and conditions of this contract or (b) to exercise any rights or remedies, or (c) to approve the Services shall not release Contractor from any of its obligations under this contract and shall not be construed as a waiver or relinquishment of the Authority's rights (a) to require strict performance of Contract

tor's obligations or (b) to require the future performance of any terms and conditions, but the Contractor's obligations with respect to such performance shall continue in full force and effect.

44. INTERPRETATION OF CONTRACT – DISPUTES

All questions concerning interpretation or clarification of this contract or the acceptable fulfillment of this contract by Contractor shall be immediately submitted in writing to the Authority's Contracting Officer for determination. All determinations, instructions, and clarifications of the Contracting Officer shall be final and conclusive unless the Contractor files with the Capital Metro President/CEO within two weeks after the Authority notifies Contractor of any such determination, instruction or clarification, a written protest, stating in detail the basis of the protest. The President/CEO shall consider the protest and notify the Contractor within two weeks of the protest filing of his final decision. The President/CEO's decisions shall be conclusive subject to judicial review. Notwithstanding any disagreement the Contractor may have with the decisions of the President/CEO, Contractor shall proceed with the Services in accordance with the determinations, instructions, and clarifications of the President/CEO. Contractor shall be solely responsible for requesting instructions or interpretations and liable for any cost or expenses arising from its failure to do so. Contractor's failure to protest the Contracting Officer's determinations, instructions, or clarifications within the two week period shall constitute a waiver by Contractor of all of its rights to further protest.

45. TOBACCO FREE WORKPLACE:

(a) Definitions:

(1) **Tobacco products:** Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.

(2) **Capital Metro Property:** The following tobacco free workplace policy refers to all Capital Metro owned or leased property. Note that this includes all buildings, facilities, work areas, maintenance facilities, parking areas and all Authority owned vehicles.

(b) Policy:

Capital Metro is committed to providing a safe and healthy worksite and promoting the health and well-being of its employees. Personal health hazards related to tobacco products are numerous and have been well documented. The health hazards related to tobacco use impact both users and non-users who are exposed to second-hand smoke. We care about the health of each and every employee, and our intent is to provide all employees and visitors with a work environment conducive to good health.

(1) The purpose of this policy is to promote a healthy environment for all employees and visitors by:

(i) Protecting employees and visitors from second hand smoke

(ii) Encouraging tobacco users to quit tobacco use

(iii) Lowering health plan costs

(2) Tobacco use is not permitted at any time, on Capital Metro owned or leased property, including personal vehicles parked in Capital Metro parking lots.

(3) There will be no designated tobacco use areas on Capital Metro owned or leased property, since no level of tobacco exposure is considered to be safe.

(4) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

(5) Capital Metro strives to be a good neighbor in the community, and as such we discourage the use of tobacco products on the property of nearby businesses and residences.

46. ORDER OF PRECEDENCE

In the event of any inconsistency between the provisions of the solicitation (including any resulting contract), the inconsistency shall be resolved by giving precedence in the following order: (1) the Schedule; (2) Solicitation Instructions and Conditions; (3) Contractual Terms and Conditions; (4) other provisions of the contract whether incorporated by reference or otherwise; and (5) the specifications or statement of work.

47. GOVERNING LAW

The rights, obligations, and remedies of the parties shall be governed by the laws of the State of Texas. Whenever there is no applicable state statute or decisional precedent governing the interpretation of, or disputes arising under or related to, this contract, then federal common law, including the law developed by federal boards of contract appeals, the United States Claims Court (formerly the Court of Claims), and the Comptroller General of the United States, shall govern. Venue for any action shall lie exclusively in Travis County, Texas. This is the complete agreement between the parties. If any provision of the contract is found to be invalid or unenforceable, the remaining provisions shall not be impaired.

48. VARIATION IN ESTIMATED QUANTITY

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than ~~10~~ ~~20~~ percent (~~10%~~ ~~20%~~) above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above ~~110~~ ~~120~~ percent (~~110%~~ ~~120%~~) or below ~~90~~ ~~80~~ percent (~~90%~~ ~~80%~~) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request (in writing) an extension of time to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascer-

tain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

49. ORGANIZATIONAL CONFLICT OF INTEREST (OCI)

(a) This contract may task the Contractor to prepare or assist in preparing work statements that directly, predictably and without delay are used in future competitive acquisitions. The parties recognize that by the Contractor providing this support a potential conflict of interest arises as defined by FAR 9.5.

(b) For the purposes of this clause, the term "~~contractor Contractor~~" means the ~~contractor Contractor~~, its subsidiaries and affiliates, joint ventures involving the ~~contractor Contractor~~, any entity with which the ~~contractor Contractor~~ may hereafter merge or affiliate and any other successor or assignee of the ~~contractor Contractor~~.

(c) The Contractor acknowledges the full force and effect of this clause. It agrees to be bound by its terms and conditions and understands that violation of this clause may, in the judgment of the Contracting Officer, be cause for Termination for Default. The Contractor also acknowledges that this does not represent the sole and exclusive remedy available to the Authority in the event the Contractor breaches this or any other Organizational Conflict of Interest clause.

50. NO THIRD PARTY BENEFICIARIES

No term or provision of this Contract is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation for a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

51. WELLNESS PROGRAM

The ~~contractor Contractor~~ will contribute a fee equivalent to \$165 per full time employee per year to Capital Metro for the program. However, other contribution approaches will be considered and must be detailed in the pricing assumptions. Capital Metro expects Contractor's contribution to this program to be an offset to the ~~contractor's Contractor's~~ other employee-related costs. For example, Capital Metro has lower absenteeism and decreased health insurance costs since implementing this program. Contractor may elect to charge individual employee a fee per month for use of wellness facilities and use those fees to offset costs of the program. Proposers should detail how these offsets have been incorporated into the pricing proposal in the pricing assumptions section of Volume 1. The wellness program fee will be collected annually as a deduction from the October invoice and based on the number of persons employed by the Contractor on October 1st. of that year.

FITNESS CENTER: Contractor employees assigned to this contract may use the Capital Metro Fitness Centers at both the Capital Metro North Operations and the 2910 E. 5th Street locations which are overseen by the Capital Metro Human Resource and Wellness Department (HR/Wellness) at a cost of fifteen and 00/100 dollars (\$15.00) per employee per month. This rate is subject to change during the term of

the Contract. Gym fee to be collected by Contractor through payroll deduction and administered as follows:

- (a) Contractor employees will complete Fitness Center documentation which will include the Contractor documentation for payment to Contractor for the fifteen and 00/100 dollars (\$15.00) payroll deduction.
- (b) Contractor will provide completed documents to HR/Wellness for enrollment.
- (c) HR/Wellness will notify Capital Metro Security for badge access to both Centers within five (5) working days.
- (d) Capital Metro's Accounts Receivable section shall invoice Contractor for the amount due each month.
- (e) Contractor will notify HR/Wellness if payroll deduction ceases within five (5) working days.

52. CAPITAL METRO PROPERTY

- (a) Delivery;: Disclaimer.

Subject to the provisions of this contract, Capital Metro will deliver to the Contractor certain space at its facility located at 9315 McNeil Road, Austin, TX 78758 as described in Exhibit J, Attachment 39 – "Capital Metro Furnished Items" for use in connection with the Services to be rendered under the contract. For purposes of this contract, the term "facilities" shall refer to this facility and any substitute location. Unless otherwise specified in this contract, the use of the facilities shall terminate upon termination of the contract. ~~For purposes of this contract, the term "facilities" shall refer to this facility and any substitute location. Unless otherwise specified in this contract, the use of the facilities shall terminate upon termination of the contract.~~ The facilities are made available to Contractor "As-Is". Capital Metro makes no warranty, express or implied, regarding the condition or fitness for use of any facilities. To the extent practical, the Contractor shall be allowed to inspect the facilities to be furnished by Capital Metro before the award of this contract. Capital Metro will insure the facilities.

- (1) Capital Metro shall perform normal maintenance of the facilities in accordance with sound industrial practices and provide janitorial and landscaping services. Capital Metro has the right, at its expense, to change or substitute the location of the facilities by directing the Contractor to a different location. After completing the directed action and upon written request of the Contractor, Capital Metro shall make an equitable adjustment, if any, as provided in Exhibit E, Section 14 – "Changes". Contractor's use of the facilities are subject to the rules and regulations promulgated by the Authority as may be amended from time to time.
- (2) Subject to the provisions of this contract, Capital Metro will deliver to the Contractor certain ~~the~~ personal property described herein (including the items listed in Exhibit J, Attachment 39 – "Capital Metro Furnished Items"), together with any related data and information that the Contractor may reasonably request and is reasonably required for the intended use of the property (hereinafter collectively referred to as "Capital Metro-furnished property"). Capital Metro-

furnished property shall include personal property subsequently made available by Capital Metro to the contractor under this contract and any ~~contractor~~ Contractor-acquired property under this contract, title to which vests in Capital Metro.

(3) For purposes of this contract, the facilities and Capital Metro-furnished property shall be referred to as "Capital Metro property."

(b) Capital Metro-furnished property.

(1) The delivery or performance dates for this contract are based upon the expectation that Capital Metro-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(2) If Capital Metro-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Capital Metro Project Manager, detailing the facts, and, as directed by Capital Metro and at Capital Metro expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon

written request of the Contractor, Capital Metro shall make an equitable adjustment, if any, as provided ~~on Clause 14, Changes in this Exhibit E, Section 14 – "Changes".~~

(3) If Capital Metro-furnished property is not delivered to the Contractor by the required time, Capital Metro shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment, if any, in accordance with ~~as provided on this Exhibit E, Section 14 – "Changes".~~

(c) Changes in Capital Metro-furnished property.

(1) Capital Metro may, by written notice:

(i) decrease the Capital Metro-furnished property provided or to be provided under this contract, or

(ii) Substitute other Capital Metro-furnished property for the property to be provided by Capital Metro, or to be acquired by the Contractor for Capital Metro, under this contract. The Contractor shall promptly take such action as Capital Metro may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment, if any, to the contract in accordance with ~~as provided this Exhibit E, Section 14 – "Changes" on Clause 20, Changes,~~ if Capital Metro has agreed to make the property available for performing this contract and there is any-

(i) Decrease or substitution in this property pursuant to paragraph (b)(1) of this clause; or

(ii) Withdrawal of authority to use this property.

(d) Title in Capital Metro property.

(1) Capital Metro shall retain title to all Capital Metro-furnished property.

(2) Title to Capital Metro-furnished property shall not be affected by its incorporation into or attachment to any property not owned by Capital Metro.

(3) Title to each item of Contractor acquired property shall pass to and vest in Capital Metro when its use in performing this contract commences or when Capital Metro has paid for it, whichever is earlier.

(e) Use of Capital Metro-furnished property. Capital Metro-furnished property shall be used only for performing this contract, unless otherwise provided in this contract or approved (in writing) by Capital Metro.

(f) Property administration.

(1) The Contractor shall be responsible and accountable for all Capital Metro-furnished property provided under this contract. ~~and shall comply with Section 54 – "Management of Capital Metro Property in the Possession of Contractor", of this Exhibit E.~~

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of all Capital Metro property in accordance with sound industrial practice, ~~and Section 54 – "Management of Capital Metro Property in Possession of Contractor".~~

(g) Period of this contract.

If not otherwise specified in the contract and if not previously terminated under this Section ~~46~~ 52 paragraph ~~(h-j)~~ below, the use of the Capital Metro Property authorized under this contract shall terminate upon termination of ~~the~~ this contract.

(h) ~~The~~ Contractor may at its own expense, with the written approval of Capital Metro, install, arrange, or rearrange readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by Capital Metro, unless Capital Metro determines that it is so permanently attached that removal would cause substantial injury to Capital Metro Property.

(1) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Capital Metro buildings or other real property without advance written approval of Capital Metro. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises.

(i) Termination of the use of the Capital Metro-furnished property.

The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any of the Capital Metro-furnished property. Except as otherwise pro-

vided in this contract, an equitable adjustment may be made in accordance with Section 14 – “Changes”.

53. LIABILITY FOR CAPITAL METRO FURNISHED PROPERTY

(a) The Contractor shall ~~not~~ not be liable for any loss or destruction of, or damage to, the Capital Metro ~~furnished~~ Property or for expenses incidental to such loss, destruction, or damage except as provided in (b) below, while in the Contractor's possession, except as provided in this clause.

(b) The Contractor shall be liable for loss or destruction of, or damage to, the Capital Metro Property, and for expenses incidental to such loss, destruction, or damage-

(1) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;

(2) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(3) For which the Contractor is otherwise responsible under the express terms of this contract;

(4) That results from willful misconduct or negligence of Contractor; or

(5) That results from Contractor failure to take reasonable steps to comply with any appropriate written direction that Capital Metro may prescribe as reasonably necessary for the protection of the Capital Metro property.

(c) If the Contractor transfers Capital Metro property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the Capital Metro property. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the Capital Metro property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance written approval of Capital Metro, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all the Capital Metro property in as good condition as when received, except for reasonable wear and tear or for their utilization in accordance with the provisions of the prime contract.

~~(d) Unless expressly directed in writing by Capital Metro, the Contractor shall not include in the price or cost under any contract with Capital Metro the cost of insurance (including self-insurance) against any form of loss, destruction, or damage to the facilities. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances) as Capital Metro shall require or approve. Such insurance shall provide for 30 days advance notice to the Contracting Officer, in the~~

~~event of cancellation or material change in the policy coverage on the part of the insurer. Documentation of insurance or an authenticated copy of such insurance shall be deposited promptly with Capital Metro. The Contractor shall, not less than 30 days before the expiration of such insurance, deliver to Capital Metro documentation of insurance or an authenticated copy of each renewal policy. The insurance shall be in the name of Capital Metro, the Contractor, and such other interested parties as Capital Metro shall approve, and shall contain a loss payable clause reading substantially as follows: Any loss under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of Capital Metro, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the office designated by Capital Metro.~~

(e) When there is any loss or destruction of, or damage to, the Capital Metro property-

(1) The Contractor shall promptly notify Capital Metro and, with the assistance of Capital Metro, shall take all reasonable steps to protect the property from further damage, separate the damaged and undamaged property, put all the property in the best possible order, and promptly furnish to Capital Metro (and in any event within 30 days) a written statement of-

- (i) The property lost or damaged;
- (ii) The time and origin of the loss or damage;
- ~~(-ii)~~ (iii) All known interests in commingled property of which the facilities are a part; and
- (iv) Any insurance covering any part of or interest in such commingled property;

(2) The Contractor shall make such repairs, replacements and renovations of the lost, destroyed, or damaged Capital Metro property or take such other action as Capital Metro may direct in writing; and

(3) The Contractor shall perform its obligations under this paragraph (g) at Capital Metro expense, except to the extent that the Contractor is liable for such damage, destruction, or loss under the terms of this clause, and except as any damage, destruction, or loss is compensated by insurance.

(f) Capital Metro is not obliged to replace or repair the Capital Metro property that has been lost, destroyed, or damaged. Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment, if any, to the contract in accordance with ~~provided in this Exhibit E,~~ Section 14 – “Changes”.

(g) *Intentionally Left Blank*

~~(h) Except to the extent of any loss or destruction of, or damage to, the facilities for which the Contractor is relieved of liability, the facilities~~ The Capital Metro Property shall be returned to Capital Metro or otherwise disposed of under the terms of this contract-

- (1) In as good condition as when received by the Contractor;
- (2) Improved; or

(3) As required under the terms of this contract, less ordinary wear and tear.

(i) If the Contractor is in any way compensated (excepting proceeds from use and occupancy insurance, the cost of which is not borne directly or indirectly by Capital Metro) for any loss or destruction of, or damage to, the Capital Metro property, the Contractor, as directed by Capital Metro, shall-

(1) Use the proceeds to repair, renovate, or replace the Capital Metro property involved; or

(2) Pay such proceeds to Capital Metro.

(j) The Contractor shall do nothing to prejudice Capital Metro's right to recover against third parties for any loss or destruction of, or damage to, ~~the the~~ Capital Metro ~~property~~ property. Upon the request of the Contracting Officer, the Contractor shall furnish to Capital Metro, at Capital Metro expense, all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of Capital Metro) in obtaining recovery.

54. MANAGEMENT OF CAPITAL METRO PROPERTY IN THE POSSESSION OF CONTRACTOR

(a) Scope

This section prescribes the minimum requirements the Contractor must meet in establishing and maintaining control over Capital Metro property.

(a) Definitions

(1) "~~Accessory~~ accessory item," as used in this section, means an item that facilitates or enhances the operation of plant equipment but which is not essential for its operation.

(2) "~~Auxiliary~~ auxiliary item," as used in this section, means an item without which the basic unit of plant Equipment cannot operate.

(3) ~~Intentionally Left Blank "Custodial records," as used in this section, means written memoranda of any kind, such as requisitions, issue hand receipts, tool checks, and stock record books, used to control items issued from tool cribs, tool rooms, and stockrooms.~~

(4) "Discrepancies incident to shipment," as used in this section, means all deficiencies incident to shipment of Capital Metro property to or from a ~~contractor's~~ Contractor's facility whereby differences exist between the property purported to have been shipped and property actually received. Such deficiencies include loss, damage, destruction, improper status and condition coding, errors in identity or classification, and improper consignment.

(5) Intentionally Left Blank

(6) "Plant plant equipment," as used in this part, means personal property of a capital nature (including

equipment, machine tools, test equipment, furniture, vehicles, ~~and accessory~~ accessory items and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

(7) "~~Property~~ property administrator," as used in this section, means an authorized representative of Capital Metro assigned to administer the contract requirements and obligations relating to Capital Metro property.

(8) "~~Real~~ real property," as used in this ~~part~~ section, means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

(9) "~~Property~~ property," as used in this ~~part~~ section, means all property, both real and personal.

(10) "~~Salvage~~ salvage," as used in this section, means property that, because of its worn, damaged, deteriorated, or incomplete condition or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs, but has some value in excess of its scrap value.

(11) "~~Scrap~~ scrap," as used in this section, means personal property that has no value except for its basic material content.

(12) "Special test equipment," as used in this section, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

(13) "Special tooling," as used in this ~~part~~ section means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.

(14) ~~Intentionally Left Blank "Stock record," as used in this section, means a perpetual inventory record which shows by nomenclature the quantities of each item received and issued and the balance on hand.~~

(15) ~~Intentionally Left Blank "Summary record," as used in this section, means a separate card, form, document~~

~~or specific line(s) of computer data used to account for multiple quantities of a line item of special tooling, special test equipment, or plant equipment costing less than \$5,000 per unit.~~

(16) "Utility ~~utility~~ distribution system," as used in this section, includes distribution and transmission lines, substations, or installed equipment forming an integral part of the system by which gas, water, steam, electricity, sewerage, or other utility services are transmitted between the outside building or structure in which the services are used and the point of origin, disposal, or connection with some other system. It does not include communication services.

(17) Intentionally Left Blank "~~Work-in-process,~~" as used in this section, means material that has been released to manufacturing, engineering, design or other services under the contract and includes undelivered manufactured parts, assemblies, and products, either complete or incomplete.

(c) Contractor Responsibility

(1) ~~The contractor~~ Contractor is directly responsible and accountable for all Capital Metro-~~furnished~~ property in accordance with the requirements of ~~the~~ this contract. This includes Capital Metro property in the possession or control of a subcontractor. ~~The contractor shall establish and maintain a system in accordance with this section to control, protect, preserve, and maintain all Capital Metro property. The Contractor shall utilize Capital Metro's property control system (Spear/Spear 4i system" including any successor system) for inventory management, except for office furnishings. This property control system shall be in writing unless the property administrator determines that maintaining a written system is unnecessary. The system shall be reviewed and, if satisfactory, approved in writing by the property administrator.~~

(2) ~~The contractor shall maintain and make available the records required by this section and account for all Capital Metro property until relieved of that responsibility. The contractor shall furnish all necessary data to substantiate any request for relief from responsibility.~~

(3) ~~The contractor~~ Contractor shall be responsible for the control of Capital Metro-~~furnished~~ Property under this section upon:

(i) Delivery of Capital Metro-furnished property into its custody or control;

(ii) Delivery, when property is purchased by ~~the contractor~~ Contractor and ~~the~~ this contract calls for reimbursement by Capital Metro (this requirement does not alter or modify contractual requirements relating to passage of title);

(iii) ~~Approval of its claim for reimbursement by Capital Metro or upon issuance for use in contract performance, whichever is earlier, of property withdrawn from contractor-owned stores and charged directly to the contract;~~
or

(iv) Acceptance of title by Capital Metro when title is acquired pursuant to specific contract clauses or as a result of ~~change orders or contract termination.~~

(4) ~~Property to which Capital Metro has acquired a lien or title solely as a result of advance, progress, or partial payments is not subject to the requirements of this section.~~

(5) ~~The contractor~~ Contractor shall require subcontractors provided Capital Metro property under the prime contract to comply with the requirements of this section. ~~Procedures for assuring subcontractor compliance shall be included in the contractor's property control system.~~

(6) ~~If the property administrator finds any portion of the contractor's property control system to be inadequate, the contractor must take any necessary corrective action before the system can be approved. If the contractor and property administrator cannot agree regarding the adequacy of control and corrective action, the matter shall be referred to the contracting officer.~~

(7) When Capital Metro Property is in the possession or control of the ~~contractor~~ Contractor the ~~contractor~~ Contractor shall promptly-

(i) Record such property according to Capital Metro's ~~the~~ established property control procedure; and

(ii) Maintain Records ~~Furnish to the property administrator all known circumstances and data pertaining to its receipt, and a statement as to whether there is a need for its retention.~~

(8) ~~The contractor~~ Contractor shall promptly report all Capital Metro-~~furnished~~ Property in excess of the amounts needed to complete full performance under the contracts providing it or authorizing its use.

(9) When unrecorded Capital Metro property is found, both the cause of the discrepancy and actions taken or needed to prevent recurrence shall be determined and reported to the property administrator.

(d) Receipts for Capital Metro Property

~~The contractor~~ Contractor shall furnish written receipts for all or specified classes of Capital Metro-~~furnished~~ Property property only when the property administrator deems it essential for maintaining minimum acceptable property controls. If evidence of receipt is required for ~~contractor~~ Contractor -acquired property, the ~~contractor~~ Contractor shall provide it before submitting its request for payment for the property. For Capital Metro ~~Furnished Property~~ Property, the ~~contractor~~ Contractor shall provide the required receipt immediately upon receipt of the property.

(e) Discrepancies Incident to Shipment

(1) Capital Metro-furnished property. If overages, shortages, or damages are discovered upon receipt of Capital Metro-furnished property, the ~~contractor~~ Contractor shall provide a statement of the condition and apparent causes to the property administrator and to other activities specified in

the approved property control system. Only that quantity of property actually received will be recorded on the official records.

(2) Contractor-acquired property. The ~~contractor~~ Contractor shall take all actions necessary in adjusting overages, shortages, or damages in shipment of ~~contractor~~ Contractor-acquired property from a vendor or supplier. However, when the shipment has moved by Capital Metro bill of lading and carrier liability is indicated, the ~~contractor~~ Contractor shall report the discrepancy in accordance with paragraph (1) of this subsection.

(f) Relief from Responsibility

Unless the contract or Capital Metro provides otherwise, the ~~contractor~~ Contractor shall be relieved of property control responsibility for Capital Metro property by:

(1) Reasonable and proper consumption of property in the performance of the contract as determined by the property administrator;

(2) Retention by the ~~contractor~~ Contractor, with the approval of Capital Metro, of property for which Capital Metro has received consideration;

(3) The authorized sale of property, provided the proceeds are received by or credited to Capital Metro; or

(4) A determination by Capital Metro of the ~~contractor's~~ Contractor's liability for any property that is lost, damaged, destroyed, or consumed in excess of that normally anticipated its operations under this contract, if-

(i) The determination is furnished to the ~~contractor~~ Contractor in writing;

(ii) Capital Metro is reimbursed where required by the determination; and

(iii) Property rendered unserviceable by damage is properly disposed of, and the determination is cross-referenced to the shipping or other documents evidencing disposal.

(g) Contractor's Liability

(1) ~~Subject to the terms of the contract and the circumstances surrounding the particular case, the contractor~~ Contractor ~~may~~ is be liable for shortages, loss, damages, or destruction of Capital Metro property. The ~~contractor~~ Contractor may also be liable when the use or consumption of Capital Metro property unreasonably exceeds the allowances provided for by the contract, or other appropriate criteria.

(2) The ~~contractor~~ Contractor shall investigate and report to the property administrator all cases of loss, damage, or destruction of Capital Metro property in its possession or control as soon as the facts become known or when requested by the property administrator. A report shall be furnished when completed and accepted products or end items are lost, damaged, or destroyed while in the ~~contractor's~~ Contractor's possession or control.

(3) The ~~contractor~~ Contractor shall require any of its subcontractors possessing or controlling Capital Metro property accountable under the contract to investigate and report all instances of loss, damage, or destruction of such property.

(h) Records and Reports of Capital Metro Property

(1) ~~The contractor's property control records shall~~ The Spear 4i system shall constitute ~~the Capital Metro's official property records unless an exception has been authorized. For management of inventory of Capital Metro-furnished property (except for office furnishings which~~ contractor ~~Contractor shall inventory separately using an inventory system approved by Capital Metro).~~ Contractor shall establish and maintain adequate control records for all Capital Metro-~~furnished~~ provided property, including ~~Capital Metro-furnished~~ property provided to and in the possession or control of a subcontractor. Any subcontractor shall utilize Capital Metro's Spear 4i system for records management of inventory of Capital Metro-furnished property (except office furnishings). ~~The property control records specified in this section are the minimum required by Capital Metro. Unless the property administrator directs otherwise, when a subcontractor has an approved property control system for Capital Metro property provided under its own prime contracts, the contractor shall use the records created and maintained under that system.~~

(2) ~~The contractor's property control system shall provide financial accounts for Capital Metro Property in the contractor's possession or control. The system shall be subject to internal control standards and be supported by property records for such property.~~

(3) ~~Official Capital Metro property records must identify all Capital Metro property and provide a complete, current, auditable record of all transactions. The contractor's system of records maintenance shall be sufficient to adequately control Capital Metro property as required by this section. The contractor's system of records maintenance, as a minimum, shall be equivalent to and maintained in the same manner as the contractor's system for maintaining records of contractor-owned property, but need not exceed the requirements of this section. The records shall be safeguarded from tampering or destruction. Records shall be accessible to authorized Capital Metro personnel.~~

(4) ~~Separate property records for each contract are desirable, but a consolidated property record may be maintained if it provides the required information.~~

(5) ~~Special tooling and special test equipment fabricated from materials that are the property of Capital Metro shall be recorded as Capital Metro-owned immediately upon fabrication. Special tooling and special test equipment fabricated from materials that are the property of the contractor shall be recorded as Capital Metro property at the time title passes to Capital Metro.~~

(6) ~~Property records of the type established for components acquired separately shall be used for serviceable components permanently removed from items of Capital Metro property as a result of modification.~~

~~(7) The contractor's property control system shall contain a system or technique to locate any item of Capital Metro property within a reasonable period of time.~~

~~(i) Basic Information~~

~~(1) Unless summary records are used as authorized under paragraph (b) of this section, the contractor's property control records shall provide the following basic information for every item of Capital Metro Property in the contractor's possession, regardless of value:~~

~~(i) The name, description, and Stock Number (if furnished by Capital Metro or available in the property control system).~~

~~(ii) Quantity received (or fabricated), issued, and on hand.~~

~~(iii) Unit price (and unit of measure).~~

~~(iv) Contract number or equivalent code designation.~~

~~(v) Location.~~

~~(vi) Disposition.~~

~~(vii) Posting reference and date of transaction.~~

~~(2) Summary records are normally adequate for special tooling, special test equipment, and plant equipment costing less than \$5,000 per unit, except where Capital Metro determines that individual item records are necessary for effective control, calibration, or maintenance. Summary records shall provide the information listed in paragraphs (1) (i) through (1) (vii) of this section, but may reference a general location, provided the contractor can locate the property within a reasonable period of time.~~

~~(j) Records of Pricing Information~~

~~(1) Requirement for unit prices.~~

~~(i) The contractor's property control system shall contain the unit price for each item of Capital Metro property except as provided in (2) of this section. When a contractor records the unit price of property on other than the quantitative inventory records, those supplementary records shall become part of the official Capital Metro property records.~~

~~(ii) The requirement that unit prices be contained in the official Capital Metro property records does not apply to those separate property records located at a contractor's secondary sites and subcontractor plants; provided, that:~~

~~(A) Records maintained by the prime contractor at its primary site include unit prices; and~~

~~(B) The prime contractor agrees to furnish actual or estimated unit prices to the secondary site or subcontractor as the need arises.~~

~~(iii) When definite information as to unit~~

~~price cannot be obtained, reasonable estimates will be used.~~

~~(2) Determining unit price.~~

~~(i) Contractor-acquired and contractor-fabricated property. Except for items fabricated by nonprofit organizations for research and development purposes, the unit price of contractor-acquired and contractor-fabricated property shall be determined in accordance with the system established by the contractor in conformance with consistently applied sound accounting principles. Generally, separate unit prices should be applied to items of special tooling and special test equipment fabricated or acquired by the contractor. However, if the contractor's accounting system is acceptable, and if maintaining detailed cost records results in excessive accounting cost or is otherwise impracticable, group pricing may be used for special tooling, special test equipment, and work-in-process in accordance with the contractor's acceptable cost accounting system. All processed material, fabricated parts, components, and assemblies charged to the contractor's work-in-process inventory, including items in temporary storage while awaiting processing, may be considered as work-in-process for this purpose.~~

~~(ii) Capital Metro-furnished property. Capital Metro shall determine and furnish to the contractor the unit price of Capital Metro-furnished property. Transportation and installation costs shall not generally be considered as part of the unit price for this purpose. Normally, the unit price of Capital Metro-furnished property will be provided on the document covering shipment of the property to the contractor. In the event the unit price is not provided on the document, the contractor will take action to obtain the information.~~

~~(k) Records of Material~~

~~(1) General. All Capital Metro material furnished to the contractor, as well as other material to which title has passed to Capital Metro by reason of allocation from contractor-owned stores or purchase by the contractor for direct charge to a Capital Metro contract or otherwise, shall be recorded in accordance with the contractor's property control system and the requirements of this section.~~

~~(2) Consolidated stock record. When a contractor has more than one Capital Metro contract under which Capital Metro material is provided, a consolidated record for materials may be authorized by the property administrator, provided, the total quantity of any item is allocated to each contract by contract number and each requisition of material from contractor-owned stores is charged to the contract on which the material is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.~~

~~(3) Custodial records. The contractor shall maintain custodial records for tool crib items, guard force items, protective clothing, and other items issued to individuals for use in their work.~~

~~(4) Use of receipt and issue documents. The property administrator may authorize the contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of~~

Capital Metro-provided material that is issued for immediate consumption and is not entered in the inventory record as a matter of sound business practice. This method of control may be authorized for-

- (i) ~~Material charged through overhead;~~
- (ii) ~~Material under research and development contracts;~~
- (iii) ~~Subcontracted or outside production items;~~
- (iv) ~~Nonstock or special items;~~
- (v) ~~Items that are produced for direct charge to a contract, or are acquired and issued for installation upon receipt, and involve no spoilage; and~~
- (vi) ~~Items issued from contractor-owned inventory direct to production or maintenance, etc.~~

(5) ~~The contractor shall take physical inventories of items included in the systems (other than work-in-process) at least annually, extend and reconcile prices to the quantitative balance for each item, and record adjustments in the stock record and financial inventory control accounts. Such physical inventories and adjustments, as well as equitable distribution to cost accounts of any inventory losses, shall be reviewed by and are subject to the approval of the property administrator. See Section 14 Changes.~~

(l) Records of Scrap or Salvage

(1) ~~The contractor Contractor shall maintain records of all scrap or salvage generated. These records shall conform to the contractor's Contractor's established system of scrap and salvage control approved by the property administrator.~~

(2) ~~The contractor's property control system shall provide the following information:~~

- (i) ~~Contract number, if practical or equivalent code designation from which the scrap or salvage derived.~~
- (ii) ~~Nomenclature or description of salvable items or classification (material content) of scrap.~~
- (iii) ~~Quantity on hand.~~
- (iv) ~~Posting reference and date of transaction.~~
- (v) ~~Disposition.~~

(m) *Intentionally Left Blank*

(n) Records of Related Data and Information

The contractor Contractor shall maintain property control and accountability, in accordance with sound business practice, of manufacturing or assembly drawings; installation, operation, repair, or maintenance instructions; and other

similar information furnished to the contractor Contractor by Capital Metro or generated or acquired by the contractor Contractor under the contract and for which title vests in Capital Metro. ~~The requirements of this section do not otherwise apply to such property.~~

(e) Reports of Capital Metro Property

(1) ~~The contractor's property control system shall provide annually the total acquisition cost of Capital Metro Property for which the contractor is accountable under each contract, including Capital Metro property at alternate locations. The following classifications (property classifications may be varied to meet individual agency needs) shall be reported:~~

- (i) ~~Plant equipment.~~
- (ii) ~~Special tooling.~~
- (iii) ~~Special test equipment.~~
- (iv) ~~Material.~~
- (v) ~~Agency peculiar property.~~

(2) ~~The contractor shall report on the information under paragraph (1) of this section as directed by the contracting officer.~~

(p) Identification

(1) ~~Except for office furnishing, u~~Upon receipt of Capital Metro-furnished property, the contractor Contractor shall promptly:

- (i) Identify the property in accordance with Capital Metro procedures;
- (ii) Mark the property in accordance with this section; and
- (iii) Record the property in the Spear 4i system. ~~its property control records.~~

(2) Except for the following, all Capital Metro-furnished property shall be marked with an indication of Capital Metro ownership:

- (i) Items issued to individuals for use in their work (e.g., protective clothing or tool crib tools) where adequate physical control is maintained over the items.
- (ii) Property of a bulk type, or where its general nature of packing or handling precludes adequate marking.
- (iii) Material that is commingled with contractor's
- (iv) Where the property administrator agrees that marking is impractical.
- (v) All facilities and real property.

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~~(v)-(vi)~~ Exempted items shall be entered and described in the Spear 4i system on the accountable property records.

(3) In addition to marking with an indication of Capital Metro ownership, the following Capital Metro furnished property shall be marked with a serial number in accordance with procedures approved by the property administrator:

- (i) ~~Special~~ special tooling.
- (ii) ~~Special~~ special test equipment.
- (iii) ~~Components~~ components of special test equipment that have an acquisition cost of \$5,000 or more and are incorporated in a manner that makes removal and reutilization feasible and economical.

(iv) ~~Plant~~ plant equipment.

(v) ~~Accessory~~ accessory items or auxiliary items equipment associated with a specific item of plant equipment that is recorded on the property records, if necessary to assure return with the associated basic item.

~~(4) The contractor shall record assigned numbers on all applicable documents pertaining to the property control system.~~

~~(5) If the property is included in the Capital Metro system, the contractor may use the property's registration number as the serial number. The contractor should obtain the registration number through the property administrator.~~

(6) The markings in paragraphs (2) and (3) of this section shall be:

- (i) Securely affixed to the property,
- (ii) Legible, and
- (iii) Conspicuous. Examples of appropriate markings are bar coding, decals, and stamping. If marking will damage the property or is otherwise impractical, the contractor Contractor shall promptly notify the property administrator and ask for the item to be exempted (see above Section 54 (p) (2). Markings shall be removed or obliterated when Capital Metro property is sold, scrapped, or donated.

~~(q) Segregation of Capital Metro Property~~

~~Capital Metro property shall be kept physically separate from contractor-owned property. However, when advantageous to Capital Metro and consistent with the contractor's authority to use such property, the property may be commingled.~~

~~(1) When Capital Metro property is special tooling, special test equipment, or plant equipment clearly identified and recorded as Capital Metro property;~~

~~(2) When-~~

~~(i) Scrap of a uniform nature is produced from both Capital Metro owned and contractor-owned material and physical segregation is impracticable,~~

~~(ii) Scrap produced from Capital Metro-owned material is insignificant in consideration of the cost of segregation and control, or~~

~~(iii) Capital Metro contracts involved are fixed-price and provide for the retention of the scrap by the contractor; or~~

~~(3) When otherwise approved by the property administrator.~~

(r) Physical Inventories. The contractor Contractor shall periodically, but not less than every two (2) years, physically inventory all Capital Metro-furnished Property (except materials issued from stock for manufacturing, research, design, or other services required by the contract) in its possession or control and shall cause subcontractors to do likewise. The contractor Contractor, with the approval of the property administrator, shall establish the type, frequency, and procedures. These may include electronic reading, recording and reporting or other means of reporting the existence and location of the property and reconciling the records. Type and frequency of inventory should be based on the contractor's Contractor's established practices, the type and use of the Capital Metro property involved, or the amount of Capital Metro property involved and its monetary value, and the reliability of the contractor's Contractor's property control system. ~~Type and frequency of physical inventories normally will not vary between contracts being performed by the contractor, but may vary with the types of property being controlled.~~ Personnel who perform the physical inventory shall not be the same individuals who maintain the property records or have custody of the property. ~~unless the contractor's operation is too small to do otherwise.~~

(s) Inventories upon Termination or Completion

(1) General. Immediately upon termination or completion of a contract, the contractor Contractor shall perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Capital Metro-furnished Property property applicable to the contract, unless the requirement is waived as provided in above Section 54 (p)(2).

(2) Exception. The requirement for physical inventory at the completion of a contract may be waived by the property administrator when the property is authorized for use on a follow-on contract; provided, that-

(i) Experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies; and

(ii) The contractor Contractor provides a statement indicating that record balances have been transferred in lieu of preparing a formal inventory list and that the contractor Contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

~~(3) Listings for disposal purposes.~~

~~(i) Standard items that have been modified may be described on listings for disposal purposes as standard items with a general description of the modification.~~

~~(ii) Items that have been fabricated, such as test equipment, shall be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.~~

(t) Reporting Results of Inventories

The ~~contractor~~ **Contractor** shall, as a minimum, submit the following to the property administrator promptly after completing the physical inventory:

(1) A listing that identifies all discrepancies disclosed by a physical inventory.

(2) A signed statement that physical inventory of all or certain classes of Capital Metro ~~furnished~~ Property was completed on a given date and that the official property records were found to be in agreement except for discrepancies reported.

(u) Quantitative and Monetary Control

When requested by Capital Metro, the ~~contractor's~~ **Contractor's** reports of results of physical inventory shall be prepared on a quantitative and monetary basis and segregated by categories of property.

(v) Care, Maintenance, and Use

The ~~contractor~~ **Contractor** shall be responsible for the proper care, maintenance, and use of Capital Metro ~~furnished~~ property in its possession or control from the time of receipt until properly relieved of responsibility, in accordance with sound industrial practice and the terms of the contract. The removal of Capital Metro property to storage, or its contemplated transfer, does not relieve the ~~contractor~~ **Contractor** of these responsibilities.

(w) *Intentionally Left Blank*

(x) Use of Capital Metro Property

(1) The contractor's procedures shall be in writing and adequate to assure that Capital Metro Property will be used only for those purposes authorized in the contract and that any required approvals will be obtained, and

(2) With respect to plant equipment with an acquisition value of \$5,000 or more, the procedures, as a minimum, shall-

(i) Establish a minimum level of use below which an analysis of need shall be made and retention justified, except for inactive plants and equipment retained for mobilization (the use level may be established for individual items or families of items, depending upon circumstances of use);

(ii) Provide for recording authorized and actual use consistent with the established use levels;

(iii) Require periodic analyses of production needs for plant equipment utilization based upon known requirements; and

(iv) Provide for prompt reporting to Capital Metro of all plant equipment for which retention is not justified.

(y) Property in Possession of Subcontractors

The ~~contractor~~ **Contractor** shall require any of its subcontractors possessing or controlling Capital Metro Property to adequately care for and maintain that property and assure that it is used only as authorized by ~~the~~ **this contract**. ~~The contractor's approved property control system shall include procedures necessary for accomplishing this responsibility.~~

~~(z) Audit of Property Control System~~

~~Capital Metro may audit the contractor's property control system as frequently as conditions warrant. These audits may take place at any time during contract performance, upon contract completion or termination, or at any time thereafter during the period the contractor is required to retain such records. The contractor shall make all such records and related correspondence available to the auditors.~~

55. CONTINUITY OF SERVICE

(a) The Contractor recognizes that the services under this contract are vital to the Authority and must be continued without interruption and that, upon contract expiration, a successor, either the Authority or another contractor, may continue them. The Contractor agrees to:

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-

in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

56. ACCESS TO EQUIPMENT AND PROPERTIES

(a) At no cost to Contractor, Capital Metro will provide, and will allow Contractor the necessary access to and use of the Service Property, Rolling Stock, maintenance facilities, equipment, and machinery as defined elsewhere in the contract. Capital Metro hereby grants Contractor the right to enter upon and utilize the foregoing for the purpose of performance of Contractor's obligations under this Contract.

(b) Prior to the date that Contractor assumes responsibility for maintenance of the equipment, Capital Metro and Contractor will conduct a joint audit of that equipment to inspect the observable conditions as of that date. Capital Metro and Contractor will conduct a joint inspection and sign a report reflecting the observed mechanical condition of the interior and exterior of all rolling stock prior to use for the Services. Contractor shall make no changes to the Service Property or equipment to be used in providing the Services without Capital Metro's prior written approval.

(c) The Contractor shall exercise all care, consideration and due diligence in the use and oversight of all equipment, materials and fixed assets provided by Capital Metro.

57. MEAN DISTANCE BETWEEN FAILURES (MDBF)

~~The Authority and the Contractor agreed during the final negotiations of the Contract that the incentives and disincentives applicable to the performance measures in the Exhibit H Payment Adjustments shall be finalized by mutual agreement within 180 days of the start of revenue service.~~

58. VEHICLE HOUR

A Vehicle Hour is one DMU operating In-Service for a period of 60 minutes (In-Service means revenue service, and other services authorized by CMTA). The number of minutes a DMU is In-Service is calculated by recording the time the DMU departs North Ops and the time the DMU returns to North Ops plus the "make ready" (pre-departure from the yard) and "tie down" (post arrival to the yard) not to exceed 90 minutes in total. The total elapsed time between the two recorded times expressed in minutes and divided by 60 equals the Vehicle Hours for that DMU. Vehicle Hours for all DMU will be totaled each month and included in the monthly invoice.

59. SPECIAL TRAINS

The Contractor will operate Special Trains at the request of CMTA. The normal procedure for the operation of a Special Train is as follows:

Not less than 7 days prior to any Special Train, CMTA will submit to the Contractor General Manager a request in writing to operate such service. No less than 3 days prior to the anticipated service date Contractor will inform CMTA of the anticipated vehicle hours necessary to operate the Special Train(s) and Contractor shall operate the service as requested, subject to operational feasibility and availability of equipment, unless CMTA has timely withdrawn its request for ser-

vice before Contractor has incurred expenses and labor related thereto. If CMTA provides shorter notice of the intended special service, Contractor shall respond to its request as soon as possible, and shall use its best efforts to supply crew and other necessary personnel to operate the special service.

60. DRUG-FREE WORKPLACE POLICY

Drug and Alcohol Testing Program. Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with 49 CFR Part 655, 49 CFR Part 40, and 49 CFR Part 29 and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of the State of Texas or the Capital Metropolitan Transportation Authority, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655, 49 CFR Part 40, and 49 CFR Part 29 and review the testing process.

Drug and Alcohol Testing Policy. Contractor Drug and Alcohol policy must include zero tolerance for positive results and other violations of the policy. Employees with a confirmed positive drug or alcohol test may not be used to perform work under the contract.

Annual Certification. Contractor agrees further to certify annually its compliance with Part 655 before March 1st and to submit the Management Information System (MIS) reports annually on or before February 28th to Capital Metro. Failure of Contractor to meet the aforementioned deadlines will result in a \$500 disincentive per calendar day per deadline.

Certification Form. 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.

Contractor agrees further to submit for review with the proposal a copy of its Policy Statement developed to implement its Drug and Alcohol Testing Program.

Consultation with Capital Metro. Contractor agrees it will consult with Capital Metro on the selection of a certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium.

Training. Contractor shall provide annual training to Supervisors and Administrators on the requirements of 49 CFR Part 29.

61. PERFORMANCE BOND

The Contractor shall be required to furnish an annual Performance Bond, in the amount equal to 5% of the total base contract period. The bonding company providing the bond must be approved for amount of the bonds on U.S. Department of Treasury Circular 570 and licensed to do business in the State of Texas. The Performance Bond shall be submitted to the Contracting Officer within ten (10) calendar days after receipt of a copy of the executed Contract or a Notice of Award. **Thereafter, the Performance Bond shall be due**

ninety (90) calendar days prior to the start of each year of the Contract. The Notice to Proceed will not be issued until a properly executed bond is received and accepted by the Authority.

62. PRICE REDETERMINATION

Provided the Contractor is in compliance with the terms of this contract, the unit prices and the total price stated in this contract shall be redetermined in accordance with this paragraph, except that the prices for supplies delivered and services performed before the first effective date of price redetermination (see paragraph (a) below) shall remain fixed.

(a) Price redetermination periods. For the purpose of price redetermination, performance of this contract is divided into two periods: Option Period 1 (contract years 8 through 11) and an Option Period 2 (contract years 12 through 15). The Price Redetermination Periods shall only apply to Option Period 1 and Option Period 2.

(b) Data submission – Option Period 1. During the fifth year of the Base Period, the Authority shall request the following data from the Contractor:

(1) proposed prices for supplies that may be delivered and services that may be performed during Option Period 1, and

(i) sufficient data to support the accuracy and reliability of this estimate; and

(ii) an explanation of the differences between this estimate and the original pricing provided with Contractor’s Final Proposal Revision (FPR).

(2) a statement of all costs incurred in performing this contract through the end of the month before the submission of proposed prices was requested by the Authority. Contractor shall provide sufficient supporting data to disclose unit costs and cost trends for:

(i) supplies delivered and services performed; and

(ii) inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

Contractor is required to submit the data no later than sixty (60) days following the Authority’s written request, and shall provide the data to the Authority in accordance with and in the format of Table 15-2, FAR 15.408 (Instructions for Submitting Cost/Price Proposals When Cost or Pricing Data Are Required).

(c) Data submission – Option Period 2. During the second year of Option Period 1, the Authority shall request the following data from the Contractor:

(1) proposed prices for supplies that may be delivered and services that may be performed during Option Period 1, and

(i) sufficient data to support the accuracy and reliability of this estimate; and

(ii) an explanation of the differences between this estimate, the original pricing provided with Contractor’s Final Proposal Revision (FPR), and the Data Submission provided under paragraph (b) above for Option Period 1.

(2) a statement of all costs incurred in performing this contract through the end of the month before the submission of proposed prices was requested by the Authority. Contractor shall provide sufficient supporting data to disclose unit costs and cost trends for:

(i) supplies delivered and services performed; and

(ii) inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

Contractor is required to submit the data no later than sixty (60) days following the Authority’s written request, and shall provide the data to the Authority in accordance with and in the format of Table 15-2, FAR 15.408 (Instructions for Submitting Cost/Price Proposals When Cost or Pricing Data Are Required).

(d) Price redetermination. Upon the Authority’s receipt of the data required by paragraph (b) or (c) above, the Authority and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies that may be delivered and services that may be performed during Option Period 1, or Option Period 2, whichever the case may be. Any negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Authority, extending the term of the contract pursuant to Schedule A – Pricing, Section 4, OPTION TO EXTEND TERM herein, and stating the redetermined prices that apply during the Option Period. In any event, whether or not the parties agree upon redetermined pricing, the Authority is not committed to exercising any Option to extend the term of this contract.