

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AUSTIN, TEXAS

CONTRACT MODIFICATION

1. CONTRACT NO: 137666	2. CONTRACT MODIFICATION NO: 47	3. EFFECTIVE DATE OF C.M. See Block 10	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: \$89,528,027.13 **INCREASE**

PRIOR TOTAL PRICE: \$ 135,080,140.37

NEW TOTAL PRICE: \$ 224,608,167.50

7. TERM OR PERIOD OF PERFORMANCE: CHANGE (4-Years)

PRIOR: September 30, 2022

NEW: September 30, 2026

8. CONTRACTOR'S EXECUTION:

Name & Title: C. Scott Perry, President
(Print or type)

E-SIGNED by Scott Perry
Signature: on 2021-12-30 12:17:48 AKST

Date Executed: ___ / ___ / 2021__

9. CONTRACTING OFFICER'S EXECUTION:

Name: Muhammad Abdullah, C.P.M., Chief Contracting Officer
(Print or type)

E-SIGNED by Muhammad Abdullah
Signature: on 2021-12-30 12:23:41 AKST

Date Executed: ___ / ___ / 2021__

10. DESCRIPTION OF CONTRACT MODIFICATION:

This modification is in accordance with EXHIBIT E-Revised-9, Contractual Terms and Conditions, Section 14, entitled CHANGES, to be made a part hereof for all pertinent purposes:

The following Exhibits to the Contract are revised, and are attached hereto and made a part hereof for all pertinent purposes. Changes are reflected in highlighted text with line in margin:

1. Refer to Exhibit A-Revised-7, Pricing Schedule. Exhibit A-Revised-7, Pricing Schedule is hereby replaced in its' entirety with **Exhibit A-Revised-8, Pricing Schedule.**
2. Refer to Exhibit A-1-Revised-4, Variable Costs. Exhibit A-1-Revised-4, Variable Costs is hereby replaced in its' entirety with **Exhibit A-1-Revised-5, Variable Costs.**
3. Refer to Exhibit A-2-Revised-4, Optional Pricing Worksheet. Exhibit A-2-Revised-4, Optional Pricing Worksheet is hereby replaced in its' entirety with **Exhibit A-2-Revised-5, Optional Pricing Worksheet.**
4. Refer to Exhibit B, Representations and Certifications. Exhibit B, Representations and Certifications is hereby replaced in its' entirety with **Exhibit B-Revised-1, Representations and Certifications.**
5. Refer to Exhibit E-Revised-9, Contractual Terms and Conditions. Exhibit E-Revised-9, Contractual Terms and Conditions is hereby replaced in its' entirety with **Exhibit E-Revised-10, Contractual Terms and Conditions.**
6. Refer to Exhibit F-Revised-6, Scope of Services. Exhibit F-Revised-6, Scope of Services is hereby replaced in its' entirety with **Exhibit F-Revised-7, Scope of Services.**
7. Exhibit K - DMU Overhaul - LCM is hereby incorporated into the contract. Exhibit K-DMU Overhaul - LCM does not include overhead and profit. Contractor is permitted to add 10% overhead and 5% profit to pricing shown on Exhibit K - DMU

Overhaul - LCM (except for wheel sets as described in 12.1.8 of Exhibit-F-Revised-7). This statement does not change Exhibit A, A-1 or the overall cost to CMTA.

8. Costs from Modification 9 for additional property insurance for DMU's is included in Exhibit A and Exhibit A-1 (as revised) beginning with Option Period 1, Year 1- FY23.
9. Costs from Modification 25 for conductors is included in Exhibit A and Exhibit A-1 (as revised) beginning with Option Period 1, Year 1- FY23.
10. Costs from Modification 46 for PTC Maintenance is included in Exhibit A and Exhibit A-1 (as revised) beginning with Option Period 1, Year 1- FY23.

This modification may be executed in multiple originals, and an executed facsimile shall have the same force and effect as an original document.

[END OF MODIFICATION #47]

The remainder of Exhibit A – Pricing Schedule has been redacted.

For further information regarding Exhibit A, you may:

- Reach out to the Contractor directly via the Contractor contact details provided on the cover page of this contract.

OR

- Submit a public information request directly to PIR@capmetro.org.

For more information regarding the Public Information Act and submitting public information requests, follow this link to our website: <https://www.capmetro.org/legal/>

EXHIBIT B-Revised-1

**REPRESENTATIONS AND CERTIFICATIONS
(LOCALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)
MUST BE RETURNED WITH THE OFFER**

1. TYPE OF BUSINESS

(a) The offeror operates as (mark one):

- An individual
- A partnership
- A sole proprietor
- A corporation
- Another entity _____

(b) If incorporated, under the laws of the State of:

Missouri

2. PARENT COMPANY AND IDENTIFYING DATA

(a) The offeror (mark one):

- is
- is not

owned or controlled by a parent company. A parent company is one that owns or controls the activities and basic business policies of the offeror. To own the offering company means that the parent company must own more than 50% of the voting rights in that company.

(b) A company may control an offeror as a parent even though not meeting the requirements for such ownership if the company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominate minority voting rights, use of proxy voting, or otherwise.

(c) If not owned or controlled by a parent company, the offeror shall insert its own EIN (Employer's Identification Number) below:

(d) If the offeror is owned or controlled by a parent company, it shall enter the name, main office and EIN number of the parent company, below:

Herzog Enterprises, Inc.
600 S. Riverside Rd
St. Joseph, MO 64507
[REDACTED]

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(a) The offeror certifies (and all joint venture members, if the offer is submitted by a joint venture) that in connection with this solicitation:

(1) The prices offered have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, with any other offeror or with any other competitor;

(2) Unless otherwise required by law, the prices offered have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening of bids in the case of an invitation for bids, or prior to contract award in the case of a request for proposals, directly or indirectly to any other offeror or to any competitor; and

(3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

4. SMALL BUSINESS ENTERPRISE GOAL

Vendors are requested to use certified SBEs. If using SBEs, these may be listed in the Subcontractor Participation form found in this packet with Exhibit D. Offerors may access the City of Austin Small Business Directory at: <http://www.ci.austin.tx.us/smbr/vendors/CertVentor.cfm>. For additional information contact Capital Metro Office of Diversity at 512-389-7512.

5. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

(a) In accordance with the provisions of 2 CFR (Code of Federal Regulations), Part 180, the offeror certifies to the best of the offeror's knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) Have not within a three (3) year period preceding this offer been convicted of or had a civil judgement rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement,

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theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in (a)(2) above; and

(4) Have not within a three (3) year period preceding this offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

(b) Where the offeror is unable to certify to any of the statements above, the offeror shall attach a full explanation to this offer.

(c) For any subcontract at any tier expected to equal or exceed \$25,000:

(1) In accordance with the provisions of 2 CFR, Part 180, the prospective lower tier subcontractor certifies, by submission of this offer, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to the statement, above, an explanation shall be attached to the offer.

(3) This certification (specified in paragraphs (c)(1) and (c)(2), above) shall be included in all applicable subcontracts and a copy kept on file by the prime contractor. The prime contractor shall be required to furnish copies of the certifications to the Authority upon request.

6. COMMUNICATIONS

(a) All oral and written communications with the Authority regarding this solicitation shall be exclusively with, or on the subjects and with the persons approved by, the persons identified in this solicitation. Discussions with any other person not specified could result in disclosure of proprietary or other competitive sensitive information or otherwise create the appearance of impropriety or unfair competition and, thereby, compromise the integrity of the Authority's procurement system. If competition cannot be resolved through normal communication channels, the Authority's protest procedures shall be used for actual or prospective competitors claiming any impropriety in connection with this solicitation.

(b) By submission of this offer, the offeror certifies that it has not, and will not prior to contract award, communicate orally or in writing with any Authority employee or other representative of the Authority (including Board Members, Capital Metro contractors or consultants), except as described below:

Individual's Name	Date/Subject of Communication

(Attach continuation form, if necessary.)

7. CONTINGENT FEE

(a) Except for full-time, bona fide employees working solely for the offeror, the offeror represents as part of its offer that it (mark one):

- has
- has not

Employed or retained any company or persons to solicit or obtain this contract, and (mark one):

- has
- has not

Paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) The offeror agrees to provide information relating to (a) above, when any item is answered affirmatively.

8. CODE OF CONDUCT

(a) Declaration of Policy: The Capital Metropolitan Transportation Authority ("Capital Metro") Board of Directors, its employees, agents, and contractors must abide by the highest standards of conduct in carrying out Capital Metro's stewardship of public funds in order for the public to be assured that the actions of Capital Metro serve only the Authority's best interests.

(b) Definitions: For the purpose of this Code of Conduct, the following definitions shall apply.

(1) "Affected" means reasonably likely to be subject to a direct economic effect or consequence.

(2) "Agent" means a person authorized by Capital Metro to act for Capital Metro.

(3) "Business entity" means a sole proprietorship, partnership, limited partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized by law through which business is conducted.

(4) "Board of Directors" means the governing body of Capital Metro.

(5) "Confidential Information" means any information in Capital Metro's possession, which Capital Metro is

legally required or has determined to keep confidential, and which Capital Metro has the legal right to keep confidential.

(6) A Board Member/employee has a "Conflict of Interest" if he/she has a substantial interest in a business entity that will be affected by his or her participation in a vote, decision, recommendation, or action.

(7) A Board Member/employee has a "Conflict of Interest" if he/she has a substantial interest in real property that will be affected by his or her participation in a vote, decision, recommendation, or action and the vote, decision, recommendation, or action will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(8) A Board Member/employee has a "Substantial Interest" in a business entity or real property if:

(i) The interest is ownership of ten (10%) percent or more of the voting stock or shares of the business entity or ownership of ten (10%) percent or more or \$15,000 or more of the fair market value of the business entity;

(ii) Funds received from the business entity exceed ten (10%) percent of the Board Member's/employee's gross income for the previous year;

(iii) The interest in real property is an equitable or legal ownership with a fair market value of \$2,500 or more;

(iv) An organization which employs, or is about to employ, a Board Member/employee who has a substantial interest in the business entity as defined in (i), (ii) and (iii) above; or

(v) One of the following individuals has a substantial interest, as defined in subsections (i), (ii) and (iii) above, in a business entity or real property: an employee's spouse, his/her partner, mother, father, brother, sister, children, aunt, uncle, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, stepchild, stepparents, grandparent, or grandchild. A relationship by marriage will end by death or divorce unless there is a living child or descendent of the marriage.

(9) "Contractor" means a person or business entity that has entered into a contract with Capital Metro to provide goods or services for Capital Metro.

(10) "Employee" means any person holding a position with Capital Metro, for which compensation is received, including part-time workers employed more than ten (10) hours per week or intermittent, seasonal, or temporary workers.

(c) Standards of Conduct: Board members, employees, agents and contractors shall exercise good-faith judgment and uphold the mission of Capital Metro as follows:

(1) Ensure that Capital Metro complies with all applicable laws and regulations;

(2) Adhere to Capital Metro policies and procedures;

(3) Efficiently transact Capital Metro business and safeguard Capital Metro assets from waste, abuse, theft or damage;

(4) Exhibit a desire to serve the public, and display a helpful, tolerant manner;

(5) Treat fellow Board members, employees, agents, contractors and the public with honesty, respect and dignity;

(6) Reveal all material facts known to them when reporting on work projects; and

(7) Disclose immediately any information regarding unethical or wrongful conduct related to Capital Metro transactions to the Board Vice Chair or the Capital Metro Ethics Officer.

(d) Absolute Prohibitions: No Board Members, Employees, Contractors, or Agents shall:

(1) Participate in a contract or real property transaction in which he/she has a substantial interest;

(2) Solicit, accept, or agree to accept any benefit as consideration for his/her decision, vote, opinion or recommendation;

(3) Solicit, accept, or agree to accept any benefit as consideration for his/her violation of any law or duty;

(4) Solicit, accept or agree to accept any benefit from a person that is interested in any Capital Metro contract or transaction;

(5) No Board Member or employee may receive or accept any gift or favor from a contractor or potential contractor of Capital Metro;

(6) Act as a surety for a business that has a contract with Capital Metro;

(7) Disclose or use confidential information that Capital Metro has not made public;

(8) Use his/her official position or employment or Capital Metro's facilities, equipment or supplies to obtain private gain or advantage;

(9) Engage in any transaction or activity or incur an obligation in a business, contract or real property transaction that would conflict with Capital Metro;

(10) Fail to disclose to his/her supervisor or appropriate Capital Metro staff his/her discussions of future employment with any business interested in Capital Metro transactions;

(11) Represent, for remuneration, any person in any proceeding involving Capital Metro's interests;

(12) Capital Metro Board Members, employees, and agents shall not use their authority to unfairly influence other Board Members or other employees or agents to perform illegal, immoral or discreditable acts;

(13) Communicate details of any active Capital Metro procurement or solicitation to any contractor, potential contractor or individual not authorized to receive information regarding the active procurement;

(14) No Board Member or employee shall:

(i) Participate for a business entity in which the employee has a substantial interest if the employee participated in the recommendation, bid, proposal or solicitation in a Capital Metro contract, procurement or personal administration matter for a period of two (2) years after leaving employment; and

(ii) Receive any pecuniary benefit from a Capital Metro contract or procurement through the ownership of a substantial interest, as defined in Section (b), subsections (6) through (8) above, in a business entity or real property for a period of two (2) years after leaving employment.

(e) Exceptions to Prohibitions: The Prohibitions listed above do not apply to the following:

(1) A gift or other benefit conferred, independent of the Board Member's or employee's relationship with Capital Metro, that is not given or received with the intent to influence the Board Member or employee in the performance of his or her official duties. The Board Vice Chair or the Ethics Officer must be consulted for a determination as to whether a potential gift falls within this exception.

(2) Food, lodging, or transportation in consideration for legitimate services rendered by the Board Member or employee related to his or her official duties.

(f) Disclosure of Conflict of Interest Requirements:

(1) A Board Member or employee must disclose any interest in a business, a contract, or in real property that would confer a benefit by their vote or decision.

(i) A Board Member or employee cannot participate in the consideration of the matter subject to the vote or decision.

(ii) Prior to the vote or decision, the Board Member or employee shall file an affidavit relating to the interest in the business, contract or real property with the Board Vice Chair or Ethics Officer.

(2) A Board Member or employee must disclose the name of a potential employer if the prospective employer has an interest in any Capital Metro transaction upon which the Board Member or employee may be involved.

(g) Penalties: In addition to turning over evidence of misconduct to the proper law enforcement agency when appropriate, the following penalties may be enforced:

(1) The failure of a Board Member to comply with the requirements of this policy shall constitute grounds for censure or removal from the Board in accordance with Section 451.511 of the Texas Transportation Code.

(2) The failure of an employee to comply with the requirements of this policy shall result in disciplinary action up to and including termination.

(3) The failure of an agent or contractor of Capital Metro to comply with this policy shall be grounds for such contractual remedy as may be appropriate up to and including termination of the contract and debarment of the contractor.

(h) By signing below, the offeror certifies and represents that the offeror:

(1) Has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this solicitation;

(2) Has read and is familiar with, and will comply with the Authority's CODE OF CONDUCT, above; and

(3) Will abide by all the terms and conditions contained herein, which apply to and become a part of any contract resulting from this solicitation.

(i) To report suspected ethical abuses or fraud, contact the ethics hotline at (512) 385-0371. It is available 24 hours a day, 365 days a year. All calls are strictly confidential.

(j) 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.

9. CERTIFICATION OF RESTRICTIONS ON LOBBYING

This Certification is applicable if the offer exceeds \$100,000.

(a) By submission of this offer, the offeror certifies to the best of the offeror's knowledge or belief that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, con-

tinuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

(d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 or not more than \$100,000 for each such failure.

10. VENDOR PERFORMANCE SCORING

(a) In compliance with the Texas Government Code, Title 10, Subtitle D, Section 2155.074, Section 2155.075, Section 2156.007, Section 2157.003 and Section 2157.125, and Texas Administrative Code, Title 1, Chapter 113.6, information obtained from the Texas Building and Procurement Commission's Vendor Performance Tracking System (VPTS) which may be found at TBPC's website at <http://www.window.state.tx.us> and may be used in evaluating responses to solicitations for goods and services to determine the best value for the Authority.

(b) The offeror certifies to the best of the offeror's knowledge and belief that if listed in the VPTS, neither it nor its principals have, in the last two years, received less than an average vendor performance scoring of 90% in either commodity delivery, service delivery, commodity performance, or service performance categories.

11. VERIFICATION REGARDING FIREARM ENTITIES AND FIREARM TRADE ASSOCIATIONS

As applicable and in accordance with Section 2274.002 of the Texas Government Code, Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the Contract against a firearm entity or firearm trade association.

12. REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SER-

VICES OR EQUIPMENT

(a) *Prohibition.* This Contract is subject to the Public Law 115-232, Section 889, and 2 Code of Federal Regulations (CFR) Part 200, including §200.216 and §200.471 related to the prohibition of certain "covered telecommunications equipment and services", which includes:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)

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

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

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

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(d) *Representation.* The Offeror represents that—

(1) It

will
 will not

provide covered telecommunications equipment or services to the Authority in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It does, does not

does
 does not

use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered

telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) **Disclosures.**

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) **For covered equipment—**

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) **For covered services—**

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) **For covered equipment—**

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model

number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) **For covered services—**

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

13. BOYCOTT OF ENERGY COMPANIES PROHIBITED:

Pursuant Chapter 2274 of Texas Government Code, Contractor verifies that: (1) it does not, and will not for the duration of the Contract, boycott energy companies, as defined in Section 2274.002 of the Texas Government Code or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to Contractor and this Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify the Authority.

14. CRITICAL INFRASTRUCTURE PROHIBITION.

Pursuant to Chapter 2274 of Texas Government Code, Contractor certifies that, if this Contract or any contract between Contractor and Capital Metro relates to critical infrastructure, as defined in Chapter 2274 of the Texas Government Code, Contractor is not: A. owned by or the majority of stock or other ownership interest of its firm is not held or controlled by: i. individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or ii. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or iii. headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.

15. SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS

(a) These representations and certifications concern a material representation of fact upon which reliance will be placed in awarding a contract. If it is later determined that the offeror knowingly rendered an erroneous or false certification, in addition to all other remedies the Authority may have, the Authority may terminate the contract for default

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and/or recommend that the offeror be debarred or suspended from doing business with the Authority in the future.

(b) The offeror shall provide immediate written notice to the Authority if, at any time prior to contract award, the offeror learns that the offeror's certification was, or a subsequent communication makes, the certification erroneous.

(c) Offerors must set forth full, accurate and complete information as required by this solicitation (including this attachment). Failure of an offeror to do so may render the offer nonresponsive.

(d) A false statement in any offer submitted to the Authority may be a criminal offense in violation of Section 37.10 of the Texas Penal Code.

Name of Offeror:

Herzog Transit Services, Inc.

Type/Print Name of Signatory:

C. Scott Perry

Signature:



Date:

12/28/2021

EXHIBIT E – REVISED-10
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.

~~(1)~~ **(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 per claim. The Authority will fund any reasonable and appropriate Self Insurance Retention (SIR) losses under the Railroad Liability Policy up to One Million Dollars (\$1,000,000) per claim as long as claims are reported to, and administered by, the Authority's retained Third Party Administrator (TPA), except that the Authority shall be entitled to reimbursement from Contractor for any SIR losses (including attorney fees and settlement costs), to the percentage extent such claims arise out of or result from the established or agreed upon negligence or willful misconduct of Contractor. If the Parties are unable to agree to the percentage extent a claim arose or resulted from Contractor's established negligence or willful misconduct, the parties shall submit the issue to an agreed upon mediator who shall be tasked with making a recommendation of fault attributable to Contractor. The parties shall equally share all costs and fees for the mediation. The Parties agree to keep all aspects of the me-

diation proceeding confidential to the extent allowed by law and such determination will not be admissible in court in the event that a third party files suit in relation to the applicable 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)~~ **Sixty-Eight-Million-Five-Hundred-Thousand (\$68,500,000)** 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. Notwithstanding anything contained herein to the contrary, any additional insured endorsement and/or waiver of subrogation required under this Section 7, shall be limited to the extent of Contractor's established negligence or fault.

(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) RESERVED

(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) in the same manner described in Subsection 7(a)(4) of this Exhibit E.**

(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 discovered 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 research 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

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- (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. The requirement for Class C Misdemeanor moving violations of having no more than two (2) moving violations (speeding ticket, rolling through stop sign, etc.) in five (5) years shall be applied only to persons that operate rubber tire or steel wheel vehicles owned by CMTA or the Contractor in the performance of their duties under this Con-

tract. Maintenance of equipment personnel that do not operate on public streets and only operate within a shop environment such as forklifts, etc. are not considered a vehicle for the purposes of this requirement.

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 7 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 7 years from date of release
	Drug Crimes	Felony	Submit to Capital Metro for review if less than 7 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 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
	Crimes Against the Person (other than sex offenses)	Felony	Submit to Capital Metro for review if less than 7 years from date of release

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Employees who operate and maintain a Capital Metro vehicle with No regular contact with public		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 7 years from date of release
	Drug Crimes	Felony	Submit to Capital Metro for review if less than 7 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 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 7 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 7 years from date of release
	Drug Crimes	Felony	Submit to Capital Metro for review if less than 7 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
	Crimes Against the Person (other than sex offenses)	Felony	Submit to Capital Metro for review if less than 7 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

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Management		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 7 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
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 7 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 7 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 con-

tract. 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 in-

clude 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 Con-

tractor 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 entertainment, 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 intentional 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, 2910 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 EXCLUDES 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 HERINAFTER 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 ORGANIZATION, 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 Contractor'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 clarifica-

tions 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 ascertain 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 con-

tract. 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-i) 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 provided 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;

(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 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 ~~contain~~ 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). The ~~contractor~~ Contractor shall establish and maintain adequate control records for all Capital Metro-~~furnished~~ 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 re-~~

quired 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, these 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.~~

~~(o) 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, uUpon 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.

~~(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 ~~p~~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 re-~~

tain 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' 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 service 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.

63. DRUG AND ALCOHOL TESTING PROGRAM

(a) The Authority and its contractors and subcontractors are required to comply with the requirements of 49 C.F.R. part 219 with no exceptions. Contractor has established and implemented, or agrees to establish and implement, and cause its applicable subcontractor's to establish and implement, a drug and alcohol testing program for a "regulated employee" performing covered "regulated service" under the contract as that those terms are defined in the regulations (including volunteers, employees and probationary employees) that complies with 49 C.F.R. part 219, produce any documentation necessary to establish its compliance with part 219, and permit any authorized representative of the United States Department of Transportation or the Federal Railroad Administration ("FRA") and the Authority to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 219, including review of the testing process.

(b) Prior to the performance of any work under the contract by any "regulated employee", the Contractor, shall furnish the Authority, and cause each subcontractor that provides regulated employees with copies of all supporting compliance documentation upon request including but not limited to the following:

- (i) A copy of the Contractor's 49 CFR part 219 Railroad Contractor Compliance Plan.
- (ii) A copy of the Federal Railroad Administration's acceptance letter for 49 CFR part 219 Railroad Contractor Compliance Plan.
- (iii) A certified list of contractor's part 219 grandfathered regulated employees (June 12, 2017).
- (iv) A certified list of regulated employees who are currently regulated by 49 CFR part 219 Railroad Contractor Compliance Plan part 219.
- (v) Copies of the regulated employees DOT 40-25 previous employer drug and alcohol record covered by 49 CFR part 219 Railroad Contractor Compliance Plan.

(vi) Updated list of contractor's regulated employees when an employee status has changed or employee becomes ineligible, along with an updated certification required in subsection (iv).

(vii) Rule G Observations when requested by the Authority.

(viii) Management Information System Report (MIS) each six (6) months.

Access to the work site will be prohibited to regulated employees not named in the certified list required by subsections (iv) and (vi).

(c) Upon notice to the Contractor, Capital Metro may require the Contractor and its subcontractors providing regulated employees to use a third-party compliance provider to track Contractor's part 219 compliance. If the Contractor or any of its subcontractors fails to utilize such required compliance provider or an approved equivalent as required, then the Authority may suspend Contractor's performance under this contract and/or pursue default remedies under this contract. The Authority reserves the right to change the required third-party compliance provider upon notice to the Contractor. In the event that Capital Metro requires the Contractor to use a third-party compliance service, any costs of the required service will be reimbursed by Capital Metro provided the Contractor follows the following reimbursement procedure: the Contractor shall provide the estimated costs of the subscription service within fourteen (14) calendar days following Capital Metro's notice to the Contractor of the adoption of a third-party compliance provider requirement and Contractor shall not incur any costs until a subsequent contract modification is fully executed.

(d) The Contractor shall provide the Authority with a list of the names of any subcontractors performing regulated services, along with a certified list of the employees assigned by the subcontractor to perform work under the contract, at least ten (10) calendar days prior to the time a subcontractor or its regulated employees enters the work site. The Contractor and each subcontractor shall be solely responsible for their compliance with 49 C.F.R. part 219.

(e) The Contractor shall include the substance of subparagraph (a)-(e) of this clause, in each applicable subcontract under this contract.

(f) If the Authority discovers that the Contractor or any of its subcontractors are not in compliance with the requirements of 49 U.S.C part 219, the Authority may suspend the Contractor's performance under this Contract and/or pursue default remedies under this contract.

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SCOPE OF SERVICES
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CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

1. EXECUTIVE SUMMARY

1.1. Introduction

1.1.1. ~~Capital Metro~~Capital Metro metropolitan Transportation Authority (CMTA) is the regional public transportation provider of Austin Texas. ~~Capital Metro~~CMTA was created in 1985 in accordance with Chapter 451 of the Texas Transportation Code. ~~Capital Metro~~CMTA was established by a voter referendum on January 19, 1985, to provide mass transportation service to the greater Austin metropolitan area.

1.2. Service Area

1.2.1. The ~~Capital Metro~~CMTA service area extends across approximately ~~534~~544 square miles and includes ~~nearly~~over one million residents. ~~Capital Metro~~CMTA provides an average of ~~408~~100,000 rides each weekday onboard its buses, trains, paratransit and vanpool vehicles. ~~Capital Metro~~CMTA owns the ~~Capital Metro~~CMTA Railroad (CMTY) which consists of 162 miles of main track between Giddings and Llano. In the spring of 2010, ~~Capital Metro~~CMTA began operating the Metrorail commuter rail service, a 32-mile line between Leander and Downtown Austin.

~~1.1.1.1.~~1.2.1.1. The railroad is divided into three subdivisions (east, central and west) and four industrial leads, Giddings, Llano Scobee and Marble Falls.

1.3. Operation

1.3.1. ~~Capital Metro~~CMTA's freight and commuter rail operation and maintenance services are provided by two contract operators. CMTA's Railroad Operations department provides contractor oversight.

1.3.2. The commuter rail contract operator provides freight and commuter dispatching services for the entire railroad. - The current freight operation has an annual capacity of 70,000 cars. ~~Capital Metro~~CMTA's freight contractor fulfills the Authority's common carrier obligation. Freight and commuter services are temporally separated.

1.3.3. During the course of this contract, the physical footprint of the railroad will expand. At a minimum, new infill stations at McKalla and Broadmoor will be added; double track sections will be constructed between Lakeline and Leander, between Kramer and East Serta as well as through to Crestview; and the Rail OMF yard track will be expanded. As each of these projects (and potentially others) is commissioned, the same operations and maintenance services called for in this contract will apply to these additions.

1.4. Schedule

1.4.1. Passenger rail service operates during peak service hours with 34-minute headways. Each one-way trip is approximately one hour long. Four DMUs are required to operate the peak hour service with one available spare. On Saturday's, trains operate between the Lakeline and Downtown stations.

1.4.2. During midday hours commuter rail service operates at one-hour headways between the Lakeline and Downtown Stations. Each one-way trip is approximately forty-seven (47)

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minutes long. Two DMUs are required to operate the midday service plus one available spare.

1.4.3. Additional commuter services are provided for special events such as South by Southwest (SXSW), The Pecan Street Festivals and Formula 1.

1.5. Commuter Rail Fleet

1.5.1. Commuter service is provided utilizing ~~six (6)~~ ten (10) Gelenk Treib Wagen (GTW) DMU 2/6 (DMU) diesel-electric, self-propelled vehicle manufactured by Stadler Bussnang AG. The DMU seats 108 passengers and will accommodate 96 standees.

1.6. Commuter Rail Maintenance Facility

1.6.1. The commuter rail maintenance facility is located at the ~~Capital Metro~~ CMTA North Operations Facility (North Ops) at 9315 McNeil Road, Austin, Texas 78758. The rail vehicle maintenance facility has two tracks for service, inspection, periodic maintenance and cleaning. The fueling station is located at North Ops.

1.7. Signal and Train Control System

1.7.1. ~~Capital Metro~~ CMTA rail's signal and train control system consists of ~~wayside~~ automatic and interlocking wayside signals, with continuous cab signaling implemented as part of E-ATC Positive Train Control. The ~~wayside~~ signal and train control system uses Microlok II ~~Alstom ElectroLogIXS~~ vital microprocessors for interlocking control and MicroTrax ~~Alstom ElectroCode-5~~ coded track circuits for train detection and cab signal generation. GCP 3000, GCP 4000, HXP3 and XP4 controllers are used for grade crossing warning system train detection and crossing control.

~~Since the Stadler DMUs do not meet the FRA requirements for crashworthiness, the commuter trains are segregated from freight trains by temporal separation.~~

1.8. Dispatch Control System

1.8.1. The Dispatch Control System is DOC User Interface and is currently provided by RailComm and accommodates both track warrant and centralized train control operation. The dispatch control system provides for the development of train sheets, train orders and other required forms. Additionally, it allows for the playback of events for incident recreation. Blocks can be applied to tracks and switches by the dispatch control system.

1.9. Mobile Voice and Data Radio Communications

1.9.1. ~~Capital Metro~~ CMTA uses voice and data communications infrastructure from Lower Colorado River Authority (LCRA). The LCRA system uses the Harris M5300 900 MHz OpenSky® trunked digital technology for mobile communications and the Harris C3 Maestro IP Console technology for dispatching communications. OpenSky® is a secure integrated digital voice and data communication system. The M5300 mobile radio is a high-performance half-duplex digital mobile radio operating on the LCRA 900 MHz OpenSky® trunked radio network using the OpenSky Trucking Protocol (OTP). OpenSky® uses a 19.2-kbps (800 MHz) or 9.6-kbps (900 MHz) physical bit rate 4-slot Time Division Multiple Access (TDMA) airlink to achieve 6.25-kHz voice channel spectral efficiency and dynamic bandwidth allocation. The LCRA system combines both voice and data onto a single trunked digital radio system that supports

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both voice and a 9.6 kbps wireless data system. Currently RDI, SLP, PPP, DNP communications data protocols are compatible with the M5300 type radios.

1.9.2. The LCRA requires any new data application that is intended to be transported via the LCRA OpenSky® radio system to be certified by the Harris data lab prior to implementation on the LCRA trunked radio system. This process ensures optimal performance of the data application in an OpenSky® wireless environment. The OpenSky® M5300 type radios are provided by CMTA METRORAIL via LCRA. ~~Capital Metro~~CMTA rail uses the following LCRA radio talk groups:

~~1.1.1.2.1.9.2.1.~~ ~~Capital Metro~~CMTA – Yard = CM_RYRD

~~1.1.1.3.1.9.2.2.~~ ~~Capital Metro~~CMTA – Commuter = CM_RCML

~~1.1.1.4.1.9.2.3.~~ ~~Capital Metro~~CMTA – Supervisor = CM_RSUP

~~1.1.1.5.1.9.2.4.~~ ~~Capital Metro~~CMTA – MOW = CM_RMWC

~~1.1.1.6.1.9.2.5.~~ ~~Capital Metro~~CMTA – Road/Freight = CM_RFML

~~1.1.1.7.1.9.2.6.~~ ~~Capital Metro~~CMTA – Emergency = CM_RAIL

~~1.1.1.8.1.9.2.7.~~ ~~Capital Metro~~CMTA – Union Pacific Dispatcher= CM_RUPI

1.9.3. ~~Capital Metro~~CMTA provides mobile radio for all DMUs, locomotives, motor vehicles and portable applications. LCRA handles all of the FCC requirements for ~~Capital Metro~~CMTA.

1.9.4. To resolve the operational issue of being on a non-railroad radio network, ~~Capital Metro~~CMTA and LCRA have created a patch between the LCRA radio network and the UPRR radio network frequency. The LCRA talk group labeled CM_RUPI is used to facilitate communication between the ~~Capital Metro~~CMTA Railroad and the UPRR.

1.9.5. Data communications from the dispatch control system to control points is handled by a UHF radio network provided by RailComm. The backup for this network is via cellular technology provided by AT&T on a private network. The radio network includes two repeaters. The base radios are located at the commuter rail stations and utilize T1 telephone lines provided by TW Telecom.

2. DEFINITIONS

- 2.1. American Railway Engineering and Maintenance of Way Association (AREMA): a North American railway industry group which publishes recommended practices for the design, construction and maintenance of rail infrastructure.
- 2.2. Accident: any contact with an unforeseen event/object, vehicle or occurrence/person which results in injury, fatality, or property damage, injury or fatality. A preventable accident is one in

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which the train operator failed to do everything that reasonable could have been done to avoid the contact. Final determination of preventability is at the sole discretion of CMTA.

- 2.3. Annulled Trip: a scheduled trip not performed.
- 2.4. Asset Management System (AMS): refers to the CMTA database used for monitoring and maintaining parts, equipment and maintenance history. The asset management system supports the process of deploying, operating, maintaining, upgrading, and disposing of assets.
- ~~1.2.2.5.~~ Central Subdivision: all trackage and railroad infrastructure from Downtown Station (MP 55.21 DT) to Austin Junction (MP 56.64 DT) and from Valley (MP 55.77) to Bill (MP 87.46) as identified in the CMTY Timetable.
- ~~1.3.2.6.~~ Centralized Traffic Control (CTC): a traffic control system that uses block signal indications to authorize train movement.
- ~~1.4.2.7.~~ Complete Trip: a one-way trip from a scheduled origin to scheduled destination, ~~e.g.e.g.,~~ from Leander Station to the Downtown Station or the Downtown Station to Leander Station.
- ~~1.5.2.8.~~ Continuous Welded Rail (CWR): rails are welded together to form one uninterrupted rail that may be several miles long. Although CWR is normally one continuous rail, it may contain joints for one or more reasons.
- ~~1.6.2.9.~~ Contract: an agreement with specific terms between two or more persons or entities in which there is a promise to provide a service in return for a valuable benefit.
- ~~1.7.2.10.~~ Contract Services: the scope of work described in this Exhibit F.
- ~~1.8.2.11.~~ Contract Year: ~~12-month~~ 12-month period of service beginning October 1st and ending September 30th.
- ~~1.9.2.12.~~ Contractor: the company awarded this contract for the dispatch operations and maintenance of commuter and dispatching freight rail service.
- ~~1.10.2.13.~~ Contract Data Requirements List (CDRL): the standard format for identifying data requirements in the contract.
- ~~1.11.2.14.~~ East Subdivision: all trackage and railroad infrastructure from Valley (MP 55.77) to the Giddings Industrial Lead (MP 27.2) as identified in the CMTY Timetable.
- ~~1.12.2.15.~~ Emergency Drill: simulated emergency situation conducted in order to test readiness for emergency situations.
- 1.13. ~~Employee In Charge (EIC): a roadway worker qualified employee designated by the railroad to direct or restrict the movement of trains past a point on a track to provide on-track safety for roadway workers, who are engaged solely in performing that function.~~

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- ~~1.14.2.16.~~ Federal Railroad Administration (FRA): the federal agency that promulgates and enforces railroad safety regulations.
- ~~1.15.2.17.~~ Federal Transit Administration (FTA): the federal agency that provides financial and technical assistance to local public transit systems.
- ~~1.16.2.18.~~ Flagger: a person providing warning for motorists using a grade crossing with malfunctioning or out of service crossing warning system components.
- ~~1.17.2.19.~~ General Accepted Accounting Principles (GAAP): the common set of accounting principles, standards and procedures that companies use to compile their financial statements. GAAP are a combination of authoritative standards (set by policy boards) and simply the commonly accepted ways of recording and reporting accounting information.
- ~~1.18.2.20.~~ General Code of Operating Rules (GCOR): a set of operating rules used by various railroads in the United States.
- ~~1.19.2.21.~~ Grade Crossing: a crossing or intersection of a railroad and a highway at the same level.
- ~~1.20.2.22.~~ In-Service Failure: any failure that occurs that doesn't allow the rail vehicle to complete its trip.
- ~~1.21.2.23.~~ Late Train: when a train that arrives more than 5 minutes and 59 seconds after scheduled arrival time at a designated station or time point.
- ~~1.22.2.24.~~ Maintenance Allocation Chart (MAC): a list of equipment maintenance functions showing the maintenance level at which each maintenance task is authorized.
- ~~1.23.2.25.~~ Maintenance of Way (MOW): the maintenance of right of way (ROW), bridges, track, drainage, crossing surfaces and rail structures.
- ~~1.24.2.26.~~ Major Repair: Repair work on items of material or equipment that need complete overhaul or substantial replacement of parts.
- ~~1.25.2.27.~~ Manual on Uniform Traffic Control Devices (MUTCD): the manual of national standards governing all traffic control.
- ~~1.26.2.28.~~ Mean Distance Between Failures (MDBF): ~~the total number of miles, in service failures that result in a delay of 5 minutes or more from the scheduled arrival time at the terminal station or annulled trip~~ The MDBF shall be calculated as the total vehicle miles, reported by CMTA, divided

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by the total mechanical failures resulting in a service delay of six (6) minutes or more from the scheduled departure time at the station, annulled station or annulled trip.

- ~~1.27~~-2.29. Mobilization Period: the time frame between the issuance of Notice to Proceed (NTP) and service start date.
- ~~1.28~~-2.30. Mobilization Plan: written instructions pertaining to all activities between the issuance of Notice to Proceed (NTP) and service start date.
- ~~1.29~~-2.31. Other Track Material (OTM): materials other than ties and rail, generally refers to spikes, tie plates and rail anchors.
- ~~1.30~~-2.32. On -Time Performance (OTP): regularly scheduled trains arriving at the designated time point or station less than six minutes behind schedule.
- ~~1.31~~-2.33. Occupational Safety and Health Administration (OSHA): a federal organization (part of the Department of Labor) that ensures safe and healthy working conditions for Americans.
- ~~1.32~~-2.34. Positive Train Control (PTC): the train control system designed to minimize train-to-train collisions, derailments caused by excessive speed, unauthorized incursions by trains onto sections of track where maintenance activities are taking place and the movement through a main line switch in the improper position.
- ~~1.33~~-2.35. Passenger: a person who is on board, boarding, waiting at platform or alighting from a rail vehicle.
- ~~1.34~~-2.36. Performance Deficiency Credit (PDC): a fixed dollar amount for Contractor's failure to perform its obligations under this contract which actual amount is difficult or incapable of estimate and is a reasonable forecast of just compensation for such failure; also, "penalty" under Texas

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Transportation Code Section 451.137, which amount shall be reflected as a credit against amounts owing Contractor under the Contract.

- ~~1.35-2.37.~~ Right of Way (ROW): a strip of land of varying width which CMTA owns that contains track and other facilities for supporting railroad operations.
- ~~2.38.~~ Roadway Worker ~~In~~ Charge (RWIC): a roadway worker qualified employee designated by the railroad to direct or restrict the movement of trains past a point on a track to provide on-track safety for roadway workers, who are engaged solely in performing that function.
- ~~1.36-2.39.~~ Routine Maintenance: maintenance, including labor, material, and specialized subcontractor services, required to keep the existing facility, equipment, and infrastructure in a state of good repair.
- ~~1.37-2.40.~~ Scope of Services: work including, all functional services, training, maintenance, inspections, repairs, labor, materials, and specialized subcontractor services, required to maintain the existing facility, equipment or infrastructure identified within the contract.
- ~~1.38-2.41.~~ Service Commencement Date: October 1, 2015
- ~~1.39-2.42.~~ Service Equipment: all the fixed assets other than land and buildings of ~~Capital~~ MetreCMTA including the rolling stock of the railway.
- ~~1.40-2.43.~~ Service Property: CMTY railroad right of way and infrastructure from Downtown Station (MP 55.21 DT) and Austin Junction (MP 56.64 DT) and all freight trackage between MP 70.2 to MP 72.73 the distance signal east of Valley (MP 55.45) to the distant signal west of Bill (MP 88.33).
- ~~1.41-2.44.~~ Service Schedule: a document that shows the time of each revenue trip through the designated time points, and includes route descriptions, deadhead times etc.
- ~~1.42-2.45.~~ Standard Operating Procedures (SOP): a set of instructions or steps used to perform troubleshooting, operations and maintenance.
- ~~1.43-2.46.~~ Service Day: the time the first revenue vehicle leaves the yard until the last revenue vehicle enters the yard over an operating period.
- ~~1.44-2.47.~~ Slow Order: a speed restriction which is below the track's maximum authorized speed.
- ~~1.45-2.48.~~ Support Property: CMTA buildings and property not located on the service property.
- ~~1.46-2.49.~~ System Mean Time Between Failure (SMTBF): the time between system failure regardless of the impact to service.
- ~~1.47-2.50.~~ System Safety Program Plan (SSPP): a document developed and adopted by CMTA describing its safety policies, objectives, responsibilities, and procedures.
- ~~2.51.~~ Tier 1 Support: initial response to the trouble call, the initial evaluation and hardware replacement (if necessary) as guided by CMTA.
- ~~2.52.~~ Tier 2 Support: in-depth troubleshooting, including connecting laptop to network hardware and reviewing log files.

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2.53. Tier 3 Support: Incorporates all levels of troubleshooting including hardware diagnostics, log files, and hardware configurations.

1.48-2.54. Texas Commission of Environmental Quality (TCEQ): provides synthesis and cohesion in environmental standards. The agency focuses mostly on promoting clean air and water and the safe management of waste in Texas.

1.49-2.55. Texas Manual on Uniform Traffic Control Devices (TXMUTCD): provides standards, guidance, and application information for signs, markings, traffic signals, and other traffic control devices.

1.50-2.56. Track: an assembly of rails, ties and fastenings over which trains and rail-bound vehicles are moved.

1.51-2.57. Track Support Structure: properties or property necessary for use or support of track including but not limited to bridges, culverts, other structures, grading, embankments, walkways, roadbed, pavements and drainage facilities.

1.52-2.58. Track Warrant Control (TWC): a method to authorize train movement or protect men and machines on a main track within specified limits in a territory designated by the timetable (Exhibit J-Attachment 5).

1.53-2.59. Vehicle Hour: 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.

1.54-2.60. Vegetation: plants considered collectively especially those found in the CMTA railroad Service Property.

1.55-2.61. West Subdivision: all trackage and railroad infrastructures from Bill (MP 87.46) to Llano Industrial Lead (MP 122.5) as identified in the CMTY Timetable.

2.3. SERVICE SCHEDULES

2.1-3.1. CMTA anticipates changing its schedules three times per year, in January, June and August.

2.2-3.2. The Contractor may propose changes to the Service Schedules to CMTA.

2.3-3.3. CMTA reserves the right to make changes at any time to its service schedule. **Capital Metro**CMTA will provide advance written notice to the Contractor of at least seven calendar days.

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Advance notice to the Contractor may be less than seven calendar days if both Parties mutually agree.

~~2.4.3.4.~~ The Contractor shall coordinate with the freight and excursion rail service providers to assure the commuter, excursion and freight services are operated on time.

3.4. SAFETY

~~3.1.4.1.~~ CMTA's objective is to provide the highest level of safety for employees, passengers, contractors and neighbors in compliance with all applicable requirements and guidelines.

~~3.2.4.2.~~ The Contractor shall implement and enforce applicable safety rules and procedures in accordance with commuter, excursion and freight rail industry best practices as requested by ~~Capital Metro~~CMTA. These additional requirements will be provided in writing.

~~3.3.4.3.~~ The Contractor shall furnish and enforce the use of any and all personal protective equipment (PPE) needed to complete the tasks required by the contract. The contractor shall provide a list of PPE (CDRL 4.3) to be used.

~~3.4.4.4.~~ **Upon request, T**the Contractor shall provide its employees special safety training prior to working with blood borne pathogens, ~~bio-hazard~~biohazard, hazardous materials and operations of special tools and equipment.

~~3.5.4.5.~~ The Contractor shall provide warning signs, barricades and verbal warnings as needed.

~~3.6.4.6.~~ The Contractor shall comply with all applicable OSHA Standards.

~~3.7.4.7.~~ The Contractor must have a formal manual plan for emergency/evacuation policies and procedures which must be OSHA compliant, available on site and shall inform its employees of emergency procedures to be adhered to in case of a fire, medical emergency, or any other life-threatening catastrophes, included in the Emergency Response Plan (CDRL 4.16.1.13).

~~3.8.4.8.~~ The Contractor shall conduct monthly job site safety inspections (CDRL ~~4.84.8~~). A monthly report of Contractor's findings and observations, as well as corrective measures taken, where required, shall be prepared and submitted to CMTA.

~~3.9.4.9.~~ The Contractor shall provide and maintain first aid kits located in ~~contractor's~~the Contractor's work areas. First aid kits shall be restocked monthly containing all emergency medical supplies as currently recommended by OSHA, the Occupational Safety and Health Organization.

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The general OSHA requirements for first aid supplies and training are contained in the General Industry standard, 29 CFR 1910.151(b) - Adequate first aid supplies shall be readily available.

~~3.10.4.10.~~ The Contractor shall support CMTA's public safety awareness programs.

~~3.11.4.11.~~ The Contractor shall comply with all applicable conditions of all FRA waivers pertaining to the CMTY railroad (**Exhibit J – Attachment 7**).

~~3.12.4.12.~~ The Contractor shall prepare an annual safety report by January 15th in conjunction with CMTA that addresses safety trends and issues for the previous performance period.

~~3.13.4.13.~~ The Contractor shall provide an Internal Control Plan (CDRL 4.13) for Accident and Incident Reporting within each department submitted no later than 120 after NTP.

4.14. The Contractor shall provide a Safety Committee Policy and Procedures Manual (CDRL ~~4.14~~~~4.14~~) submitted no later than 120 after NTP.

4.15. In addition to FRA requirements, the Contractor shall conduct accident/incident investigation reports and provide reports for all incidents as required by CMTA.

4.16. **Contractor Safety Compliance Plan (CSCP)**

4.16.1. The Contractor shall establish and implement a Contractor Safety Compliance Plan (CSCP) that demonstrates compliance with all provisions of CMTA's System Safety Program Plan (SSPP), which is based on the requirements of NPRM CFR 49, Part 270, System Safety Program Requirements for Passenger Railroads. To implement the CSCP, the Contractor shall establish appropriate policies and procedures, lines of authority, levels of responsibility and accountability, and methods of documentation. This documentation shall be submitted

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to CMTA for review and approval. The Contractor Safety Compliance Plan shall include (CDRL ~~4.16.1~~~~4.16.1~~):

- ~~3.13.1.1.4~~ 4.16.1.1. Railroad Operating Rules 49 CFR Part 217 (CDRL 4.16.1.1)
- ~~3.13.1.2.4~~ 4.16.1.2. Control of Alcohol and Drug Use 49 CFR Part 219 (CDRL 4.16.1.2)
- ~~3.13.1.3.4~~ 4.16.1.3. Railroad Accident/Incident Reporting 49 CFR Part 225 (CDRL ~~4.16.1.3~~~~4.16.1.3~~)
- ~~3.13.1.4.4~~ 4.16.1.4. Emergency Preparedness 49 CFR Part 239 (CDRL ~~4.16.1.4~~~~4.16.1.4~~)
- ~~3.13.1.5.4~~ 4.16.1.5. Qualification/Certification 49 CFR Part 240 (CDRL ~~4.16.1.5~~~~4.16.1.5~~)
- ~~3.13.1.6.4~~ 4.16.1.6. Close Call Reporting Evaluation Procedure (CDRL ~~4.16.1.6~~~~4.16.1.6~~)
- ~~3.13.1.7.4~~ 4.16.1.7. Environmental Hazard Procedures/Policy (CDRL ~~4.16.1.7~~~~4.16.1.7~~)
- ~~3.13.1.8.4~~ 4.16.1.8. Roadway Worker Safety Program 49 CFR Part 214 (CDRL ~~4.16.1.8~~~~4.16.1.8~~)
- ~~3.13.1.9.4~~ 4.16.1.9. System Safety Program Plan (CDRL ~~4.16.1.9~~~~4.16.1.9~~)
- ~~3.13.1.10.4~~ 4.16.1.10. Hazard Risk Reduction Plan (CDRL ~~4.16.1.10~~~~4.16.1.10~~)
- ~~3.13.1.11.4~~ 4.16.1.11. Public Safety Plan (CDRL 4.16.1.11)
- ~~3.13.1.12.4~~ 4.16.1.12. Intentionally left blank
- ~~3.13.1.13.4~~ 4.16.1.13. Emergency Response Plan (CDRL 4.16.1.13)

4.16.2. The CSCP shall address the hazard management process to include hazard identification, hazard categorizations (hazard severity/probability), hazard investigation and hazard mitigation and resolution through elimination, minimization, and control safety hazards and their attendant risks. The Contractor shall develop and implement a risk-based hazard management plan to continuously identify report, track, analyze and mitigate hazards.

~~3.13.1.14.4~~ 4.16.2.1. The CSCP shall meet all applicable federal, state, local and other legal requirements and regulations and the CMTA Safety Program.

~~3.13.1.15.4~~ 4.16.2.2. The Contractor shall identify changes that require modification of the CSCP on an ongoing basis and incorporate them in the CSCP and submit these changes to CMTA for approval, within 45 calendar days of the date of the change ("Contractor Safety Compliance Plan Change").

~~3.13.1.16.4~~ 4.16.2.3. The Contractor's CSCP must be submitted for review to CMTA Safety Manager and the Vice President of Rail Operations, within 90 days after Notice to Proceed (NTP). ~~Capital Metro~~CMTA's Safety Manager and the Vice President Rail Operations or designee shall review the CSCP, and either approve it or, within 30 days, direct the Contractor to revise it. The Contractor shall revise the CSCP accordingly within 30 days of receipt of such revisions from CMTA and resubmit to ~~Capital~~

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MetroCMTA's Safety Manager and the Vice President Rail Operations or designee for review and approval.

~~3.13.1.17.4.16.2.4.~~ The Contractor shall update the CSCP to ensure compliance with CMTA's annual revision of its safety program within 30 days of receiving the updated CMTA Safety Program and all other applicable regulatory requirements, and deliver the updated CSCP to CMTA for approval by ~~October 1st~~ March 20th of each Contract Year.

~~3.13.1.18.4.16.2.5.~~ CMTA may request modifications to the CSCP due to internal audit report results, on-site reviews and investigations, changing trends in accident/incident or security data, external audits, tests, reviews, FRA regulations, or other reasons that may come to the attention of CMTA. Upon receipt of a written request for CSCP modifications from CMTA, the Contractor shall submit a revised CSCP within 45 calendar days thereof to CMTA for approval.

~~3.13.1.19.4.16.2.6.~~ The Contractor's CSCP shall include procedures that incorporate the relevant provisions of Quality of this Contract to ensure safety audits include review of other parameters of performance includes operations and maintenance processes.

~~3.13.1.20.4.16.2.7.~~ The Emergency Response shall include processes and procedures for responding to emergency medical conditions experienced by Customers or Contractor Personnel on-board trains, in stations, or within the Service Property.

~~3.13.1.21.4.16.2.8.~~ The Contractor shall provide a Safety Performance Report (CDRL ~~4.16.2.8~~~~4.16.2.10~~) report detailing safety performance, all pending safety issues as well as prior incidents and mitigation/resolution measures taken at least one week in advance of each quarterly meeting for CMTA review and use during each meeting.

4.16.3. All hazardous conditions shall be documented and submitted to CMTA as soon as practical with mitigating/corrective actions noted in the ("Hazardous Condition Report").

4.16.4. All unacceptable hazardous conditions shall be documented and submitted in writing to CMTA with mitigating/corrective actions noted within one hour of discovery ("Unacceptable Hazardous Condition Report").

4.17. **Emergency Response Plan**

4.17.1. The Contractor shall establish and implement an Emergency Response Plan (ERP) (CDRL ~~4.17.14~~~~4.16.1.13~~), to effectively address conditions which could disrupt Rail Services that require services of emergency response agencies.

4.17.2. The Contractor shall update the ERP annually, and shall provide it to CMTA for approval no later than August 1st of each Contract Year ("Emergency Response Plan Update").

4.18. **Emergency Preparedness Plan**

4.18.1. The Contractor shall establish and implement an Emergency Preparedness Plan (EPP) (CDRL ~~4.16.1.44~~~~4.16.4.4~~), which shall be compliant with FRA requirements and detail the Contractor's emergency preparedness policies, procedures and programs. The initial EPP shall be provided to CMTA no later than 90 days after NTP to the Vice President of Railroad

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Operations or designee, in consultation with CMTA Safety Officer, will review the EPP, and either approve the plan or, within 30 days, direct the Contractor to revise the plan. The Contractor shall revise the plan accordingly within 30 days of receipt of revisions from CMTA and resubmit to ~~Capital Metro~~CMTA's Safety Manager, Security Manager, and the Vice President Rail Operations or designee for review and approval.

4.18.2. The EPP shall be updated annually by September 1st of each Contract Year. The Contractor shall provide to CMTA drafts of subsequent EPPs no less than 60 days before such plan or amendments are submitted to the FRA (each, an "Emergency Preparedness Plan Update"). The Vice President Rail Operations or designee, in consultation with CMTA Safety Officer, CMTA Security/Emergency Management Officer will review such plan, and either approve the plan or, within 30 days, direct the Contractor to revise such plan. The Contractor shall revise the EPP submit to ~~Capital Metro~~CMTA's Safety Manager, Security Manager and the Vice President Rail Operations or designee for review and approval before submitting to the FRA.

4.18.3. At a minimum, the Contractor shall cooperate and fully participate in two CMTA full scale Emergency Preparedness Drills (tabletop and field exercises) during each Contract Year at times to be determined by CMTA. The Contractor shall provide all personnel required to fully simulate daily operations under this Contract including passengers with physical disabilities.

4.18.4. Emergency preparedness drills and tabletop exercises, when required, will be planned and conducted to ensure the following:

~~3.13.1.22~~4.18.4.1. Adequacy of emergency plans and procedures;

~~3.13.1.23~~4.18.4.2. Readiness of railroad operating and maintenance personnel to perform under emergency conditions;

~~3.13.1.24~~4.18.4.3. Effective coordination between railroad operations and emergency response agencies—police, fire, and emergency medical services; and

~~3.13.1.25~~4.18.4.4. Readiness of fire, police, and emergency medical services personnel with sufficient information relative to the uniqueness of railroad dispatch operations. Maintain that agencies can respond in a timely and successful manner.

4.18.5. Any drill/tabletop exercise required will be outlined in advance of the exercise. Drills and tabletop exercises will be evaluated against the objective established for the drill/exercise. Drills/tabletop exercises will be followed by an assessment of the drill in a meeting, including all drill participants. Following this assessment, ~~the Contractor will~~the Contractor shall document lessons learned and actions needed to improve both internal and external emergency response capabilities. Outcomes may include making recommendations for revisions to the EPP including policies and procedures, operating procedures that affect

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emergency response, and changes to training plans and training programs pertaining to emergency response and personnel.

5. **SECURITY**

- 5.1. The Contractor shall provide the appropriate notification as required by CMTA, Federal, state and local governing agencies.
- 5.2. The Contractor shall conduct its operation in accordance with 49 CFR 1580 Rail Transportation Security.
- 5.3. The Contractor shall support CMTA's security initiatives. (i.e., table-top exercises, awareness of suspicious activities, reporting of trespassers, etc.)
- 5.4. The Contractor shall maintain vigilance in reporting security incidents immediately in order to facilitate rapid response.
- 5.5. The Contractor shall retrieve and submit to CMTA all photographic, video, audio, statements, vehicle data ~~downloaded~~downloaded, and analysis of the data as required during investigation of accidents, incidents, complaints and routing monitoring upon request or as required. The Contractor shall cooperate and comply with any and all security practices, policies, programs and plans as determined by the CMTA. The Contractor shall make all required notification both to internal and external reporting agencies as required by agreement or regulation.
- 5.6. Contractor System Security Compliance Plan (CSSCP)
 - 5.6.1. The Contractor shall establish and implement a Contractor System Security Compliance Plan (CDRL ~~5.6.15-6.4~~) that describes the processes by which the Contractor shall perform security functions in accordance with CMTA's System Security Plan. The CSSCP shall be updated annually by October 1st of each Contract Year and shall detail the Contractor's security policies, procedures and programs.
 - 5.6.2. The proposed CSSCP shall meet all applicable federal and other legal requirements, regulations, and standards, and must be provided to CMTA not more than 90 days after NTP. The Vice President of Rail Operations or designee, in consultation with CMTA Security Department will review the CSSCP, and either approve the plan or, within 30 days, direct the Contractor to revise the plan. The Contractor shall revise such plan accordingly within thirty (30) days of receipt of revisions from ~~Capital Metro~~CMTA and resubmit to ~~Capital~~

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~~Metro~~CMTA's Security Manager and the Vice President Rail Operations or designee for review and approval.

5.6.3. All Contractor security documents and plans shall be developed and maintained in accordance with CMTA's Sensitive Security Information ("CSSI") guidelines and procedures (**Exhibit J Attachment 19**).

5.6.4. At a minimum, the CSSCP shall:

~~3.13.1.26~~5.6.4.1. Document the Contractor's process for managing threats and vulnerabilities during operations, and to publish those requirements for each building and facility it operates.

~~3.13.1.27~~5.6.4.2. Identify controls in place that address the personal security of passengers and Contractor Personnel.

~~3.13.1.28~~5.6.4.3. Document the Contractor's process for conducting internal security reviews to evaluate compliance and measure the effectiveness of the CSSCP.

~~3.13.1.29~~5.6.4.4. Document the Contractor's process for making its CSSCP and accompanying procedures available to CMTA, or other oversight authority agency for review and approval.

5.7. CMTA will provide Contractor ID's that must be worn and displayed properly.

5.8. Security and access control systems will be hosted by CMTA. Any recommendations taken by the Contractor to improve security systems or implement additional security related infrastructure on the Service Property, must be submitted for review and approval by CMTA Security Manager and Vice President of Rail Operations.

5.9. Any security related implementation and or improvements made on the Service Property shall become CMTA property as of the Termination Date.

5.9.1. The Contractor's Safety and Training Manager shall attend quarterly meetings, and other meetings as directed by CMTA, with CMTA Security Manager and the Vice President of Rail Operations or designee to discuss recent security related incidents and concerns, and the Contractor's compliance with the CSSCP.

5.9.2. The Contractor shall provide a report detailing all pending security issues as well as prior incidents and mitigation/resolution measures taken at least one week in advance of each quarterly meeting for CMTA review and use during safety and security meetings.

5.9.3. The Contractor shall provide a monthly "Security Issue & Incidents Report" (CDRL ~~5.9.35~~9.3). Mitigation measures shall be subject to review and approval by CMTA Security Manager and Vice President Rail Operations or designee.

5.9.4. In the event the Contractor becomes aware of a security incident, non-secure, or potentially vulnerable conditions on the property or the equipment, or otherwise related to the service, the Contractor shall immediately take all actions required to mitigate such condition.

5.10. ~~5.10~~ Contractor shall notify CMTA within one (1) hour of any changes in personnel or employment status.

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5.6. MANAGEMENT SERVICES

5.1.6.1. The Contractor shall be solely responsible for the management of their personnel. In the performance of its obligations under this Contract, the Contractor is an independent contractor for, and not an agent of, CMTA.

5.2.6.2. The Contractor shall be responsible for compliance with all applicable CMTA, Federal, State, municipal manufacturer, supplier, ordinances, policies, regulations and recommendations etc. during the performance of this contract.

5.3.6.3. The General Manager

5.3.1.6.3.1. The Contractor shall submit a candidate for General Manager (GM) subject to the prior approval of CMTA.

5.3.2.6.3.2. The GM should have demonstrated at least five years of commuter rail experience (within the last 10 years) as a senior operating officer of a commuter railroad service.

6.3.3. The GM will be the single point of contact for CMTA regarding all issues pertaining to the contract all written correspondence concerning this Contract will be addressed to this individual.

6.3.4. The GM must be or become a resident of the Austin area and available 24 hours/day, seven days a week at least 30 days prior to contract performance. The GM shall be fully empowered to make all operating decisions on behalf of the Contractor as necessary to maintain the safe and efficient operation and will serve as the Contractor's representative in all meetings with CMTA and/or its duly appointed representatives and designees.

6.3.5. The GM must attend any meeting assigned including, without limitation, public meetings with CMTA's Vice President of Rail Operations or other senior staff, as requested by CMTA, and be available at such other times as CMTA may direct to consult with CMTA representatives.

6.3.6. The GM will be responsible for and empowered to make immediate decisions as necessary during the Mobilization Period.

6.3.7. The Contractor shall not temporarily reassign the individual assigned to the GM position within the first 24 months of the assignment.

6.3.8. The GM shall be assigned exclusively to perform the Contract Services for CMTA and shall not perform functions in connection with any other service or contract without CMTA written authorization.

6.3.9. CMTA will continuously monitor the effectiveness of the GM. The GM shall continually demonstrate proficiency in this position for the duration of this Contract. Failure to continually demonstrate proficiency in performing his/her duties in connection with this Contract will be grounds for removal from the position of GM by CMTA.

6.3.10. The Contractor shall fill any vacancy or absence in the GM's position on an acting basis immediately. The Contractor shall supply CMTA with a list of empowered designees (CDRL ~~6.3.10~~6.3.10) including their names, resumes and phone numbers to be used as a point of

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contact at times when the GM is unavailable and must be able to temporarily fill vacancies in the GM position any time a vacancy occurs.

6.3.11. The GM will designate an Acting GM who shall have full authority to discharge the responsibilities of the GM in his/her absence.

6.3.12. A vacancy in the GM position will be filled on a permanent basis, by an individual approved in advance by CMTA. Any vacancy of more than 45 calendar days shall result in a reduction in the monthly invoice.

6.4. Contractor's Management Personnel

6.4.1. The Contractor shall submit a comprehensive organizational chart (CDRL ~~6.4.16.4.1~~ 6.4.1) and list of functional responsibilities and required individual qualifications no later than 60 days after NTP. The individuals assigned as direct reports to the GM must be or become a resident of the Austin metropolitan area and available 24 hours a day, seven days a week with a ~~one~~ one-hour response time to emergency calls. The ~~contractor~~ Contractor shall provide an updated organizational chart within one week of any personnel changes along with background check certification.

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6.5. Manager of Railroad Transportation

6.5.1. The Manager of Railroad Transportation shall have a combination of at least ~~ten~~five (5) years professional railroad transportation experience in the freight, passenger, and/or commuter railroad industry and shall manage daily operation of all revenue and non-revenue trains; train crews; terminals, yards and stations; customer and employee safety; daily interaction and cooperation with freight and ~~–~~excursion train providers and other third parties including Positive Train Control system Contractors and consultants.

6.6. Manager of Rail Vehicle Maintenance

6.6.1. The Manager of Rail Vehicle Maintenance shall have at least ~~ten~~five (5) years professional railroad mechanical experience maintaining railroad passenger locomotive or DMUs in compliance with FRA regulations and APTA “Manual of Standards and Recommended Practices for Passenger Railroad Equipment”.

6.6.2. The Manager shall oversee and direct all production planning activities as well as implementation of all Rail Vehicle Maintenance activities. This includes but is not limited to all inspections, maintenance, repair, and maintenance planning for the CMTA rail vehicle fleets and train control carborne systems. The manager shall interact and cooperate with third parties including but not limited to Positive Train Control system contractors and consultants. He/She shall manage integration of new rail vehicles into the fleet.

6.7. Maintenance of Way Manager

6.7.1. The Maintenance of Way Manager shall have at least ~~ten~~five (5) years railroad freight/commuter maintenance of way experience consisting of installing, maintaining and restoring track, bridges and track drainage systems on FRA track classes ranging from excepted to Class IV track or better with jointed and continuously welded ~~rail~~rail; cutting welding and grinding rail, frogs, switch points, replacing grade crossings, identifying and correcting rail defects, rerailing derailed trains. Inspecting and maintaining of open deck and ballasted deck bridges with at least four years of experience managing maintenance of way crews.

6.7.2. The Manager shall be responsible for directing all inspection, maintenance, repair and maintenance planning for all CMTA right of way including track bridges, culverts and drainage systems.

6.8. Manager of Dispatching Services

6.8.1. The Manager of Dispatching Services shall have at least ~~ten~~five (5) years previous railroad dispatching experience on an FRA regulated railroad in a combination of freight, passenger,

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commuter train dispatching in CTC, TWC, DTC territories with at least four years' experience as a Chief or Assistant Chief Dispatcher.

6.8.2. The Manager shall be responsible for oversight of the Contractor's dispatch services, service recovery, incident notification and public information efforts, including the supervision of dispatching responsibilities.

6.8.3. The Manager shall be responsible for, coordinating alternate transportation in the event of service disruption, inclement weather, accident or other circumstances.

6.9. **Manager of Finance, Accounting, and Administration**

6.9.1. The Manager Finance, Accounting and Administration shall have experience; knowledge of Generally Accepted Accounting Principles; business and financial planning; budget and production plan development and implementation; financial information collection and reporting;

6.9.2. The Manager's responsibilities include oversight of all financial activities and audits associated with Contract Services; including implementation of corrective actions and recommendations deemed necessary and approved by CMTA; financial reporting; oversight of all accounting activities associated with Contract Services; prompt and accurate invoice preparation and delivery including accurate deductions as they occur; oversight of all administrative activities associated with Contract Services.

6.10. **Manager of Safety & Training**

6.10.1. The Manager of Safety & Training shall have at least ~~ten~~five (5) years of rail experience consisting of railroad transportation and dispatching and or rail vehicle maintenance, or maintenance of way or signal and communication maintenance, railroad or rail transit safety and systems safety, security and accident and incident investigation and NIMS training.

6.10.2. The Manager shall have experience in administering all applicable federal, state, county, municipal and CMTA regulations pertaining to railroad operations, dispatching, and maintenance, including but not limited to FRA, GCOR, NTSB, HazMat, OSHA, other safety regulations and investigating accidents and incidents investigation procedures and requirements, Occupational Safety & Health (OSHA) 29 CFR 1910 & 1926 regulations.

6.10.3. Responsibilities include day-to-day management of CMTA's System Safety Program Plan and the Contractor's safety compliance plans; investigation and reporting of incident, accidents, derailments, near misses, close calls, safety related complaints, rules violations, and other safety concerns; PPE training, hazard management, bio-hazard, risk reduction and corrective action plans; performing field audits/inspections, testing with crafts and riding trains weekly; reviewing all syllabus and class material prior to classes being taught and attend/audit training classes; and other regulatory CMTA and Contractor safety initiatives, rules programs, orders, and processes.

6.10.4. Responsibilities further include developing and implementing and administrating the CSCP; completion of safety- and training-related CDRLs on-time and accurately;

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management of all safety risk mitigation for the Contractor; interaction and cooperation with CMTA Transportation, Safety, Security; and ~~Third Party~~Third-Party Railroads.

6.10.5. The Manager of Safety and Training will be a full-time professional resides in the Greater Austin, Texas Metro area and available to respond to callouts in an hour or less.

6.11. **Manager of Signal System Maintenance**

6.11.1. The Manager of ~~Signals~~Signal System Maintenance should have at least ~~ten~~five (5) years of railroad signal experience consisting of a combination of signal system design, construction, maintenance, and ~~test~~(testing of which a minimum four of three years ~~supervision) of APB,~~shall be in a supervisory role. This experience shall include Automatic Block Signaling (ABS), Centralized Traffic Control (CTC), Alstom ElectroLogIXS interlocking vital microprocessors, Enhanced Automatic Train Control (E-ATC) (Wayside and Carborne), interlocking (Microlok)Positive Train Control, EC-4/EC-5 coded track circuits and grade crossing warning systems (MS2000, GCP3000, GCP4000, HXP3, and XP4) consisting of solid state and relay based train detection (Microtrax) and cab signaling systems using but not limited to Ansaldo, Siemens and Alstom (GETS) equipment.). The Manager of Signal System Maintenance ~~must demonstrate~~must demonstrate a working knowledge of all the regulatory requirements pertaining to the design, operation, construction, maintenance and test of wayside, cab and grade crossing warning signal systems, demonstrate proficiency in developing implementing and follow signal system inspection test, cutover and maintenance procedures and instructing subordinates.

6.11.2. Responsibilities include managing the maintenance, repair, inspection and testing of signal and train control systems including but not limited to automatic block, interlocking, highway grade crossing warning systems, wayside signal systems, cab signals, ensuring regulatory compliance, maintaining records, identifying and mitigating failure trends, tracking signal inspections, conducting efficiency tests, auditing signal maintenance, overseeing the development of and implementation of signal maintenance procedures.

6.11.3. In addition, this individual will be responsible for the operation and maintenance of systems related to Title 49 CFR Part 236 Subpart I.

~~5.4.6.12.~~ **Manager of Communication System Maintenance**

6.12.1. The Manager of Communications should have at least ten (10) years of experience consisting of a combination of communications systems engineering construction, maintenance (minimum four years supervision) and test of railroad wayside and office communication systems including but not limited to analog and digital telecommunications, T1 / DS0 communications and associated telecommunications equipment, DMS signs, microwave radio, UHF data radio network, cellular router/modems, cellular private network, network / LANs, SCADA, and fiber communication devices. The Manager of Communications System Maintenance ~~must demonstrate a~~ working knowledge of all the regulatory requirements pertaining to the design, operation, construction, maintenance and test of railroad communication systems, demonstrate proficiency in developing, implementing, and following communication system inspection, test, cutover and maintenance procedures and providing instructing subordinates.

6.13. **Material Manager**

6.13.1. The Material Manager should have at least five (5) years of material management and inventory control experience. The manager shall have familiarity with the procurement and materials regulations of the railroad industry; shall have knowledge of the FTA procurement

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regulations and reporting requirements. The manager shall have railroad or rail transit experience using an electronic asset management system.

- 6.13.2. Responsibilities include oversight of all the Contractor's procurement activities; material storage, handling and distribution activities; all procurement documentation and tracking; data entry and use of material management information system; all procurement and material management reporting; developing, implementing and overseeing the monthly material meetings with end users and CMTA; minimizing stock-outs; accurate and timely ordering, storage, handling, distribution and tracking of all project material; and required reporting to FTA and other funding agencies.

6.14. E-ATC PTC Maintenance Technician

6.14.1. The Enhanced Automatic Train Control (E-ATC) PTC Maintenance Technician shall have at least two (2) years of E-ATC PTC experience and at least three (3) years of railroad signal experience consisting of preventive and corrective maintenance of signal system Centralized Traffic Control (CTC), Alstom Electrologists interlocking vital microprocessors, EC-4/EC-5 coded track circuits, cab generators and PTC system on-board equipment's.

6.15. Changes in Management Personnel

~~5.4.1.6.15.1.~~ The Contractor's management team stability is a critical element in successful performance under this Contract. To achieve that objective, the Contractor shall not transfer the ~~GM~~ General Manager or any of the ~~GM's~~ direct reports for a minimum of twenty-four (24) months from the ~~Service~~ Commencement Date, unless otherwise approved by ~~Capital Metro~~CMTA.

~~5.4.2.6.15.2.~~ Any change in the General Manager position or other Key Personnel positions that occurs within twenty-four (24) months of the Commencement Date shall require the Contractor to pay the Authority Twenty ~~Five-five~~ Thousand Dollars (\$25,000), per position, per change, in liquidated damages. The Authority may waive damages, at the sole discretion of the Authority, if the Contractor provides a replacement acceptable to the Authority.

~~5.4.3.6.15.3.~~ The Contractor shall provide no less than ninety (90) days written notice of any proposed change in the General Manager. The Authority shall have the right to terminate the Contract or assign liquidated damages of Twenty ~~Five-five~~ Thousand Dollars (\$25,000) per change, per incident, solely at ~~Capital Metro~~CMTA's discretion, if any personnel change is made to the General Manager position without written Authority approval and/or proper notice.

~~5.4.4.6.15.4.~~ CMTA reserves the right at any time to direct the ~~contractor~~Contractor to remove the ~~GM~~ or any direct reports to the ~~GM~~ for cause from the performance of Contract Services, or transferred to another position. ~~Capital Metro~~CMTA reserves the right at any time to direct the Contractor to correct deficiencies in the performance of the General Manager and/or other Key Personnel. ~~Capital Metro~~CMTA may issue the Contractor a written Deficiency Notice identifying the deficiencies of the General Manager and/or other Key Personnel. The Contractor shall have thirty (30) days from receipt of the written Deficiency Notice to respond with proposed corrective actions to resolve the identified deficiencies.

6.15.5. ~~Capital Metro~~CMTA reserves the right at any time to issue the Contractor a Dismissal or Reassignment Notice requesting dismissal or reassignment of the General Manager and/or other Key Personnel. The Contractor shall have two (2) days from receipt of the written Dismissal or Reassignment Notice to agree to such dismissal or reassignment ~~request,~~ ~~or request or~~ provide justification for further consideration. ~~Capital Metro~~CMTA shall have the right to refuse any further consideration and require the Contractor to execute the requested

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dismissal or reassignment. In the event that the Contractor terminates a member of the management team for cause, the Contractor shall provide notice to CMTA within one (1) hour of termination.

6.15.6. The Contractor shall submit to CMTA for review and approval the names and resumes of the individuals it proposes to fill any vacancy in a management position.

6.15.7. The vacancy of management key positions for more than thirty (30) 45 days shall result in a reduction in the monthly invoice.

6.16. Availability of Employee Records

6.16.1. The Contractor shall maintain employee records as necessary in order for CMTA to determine the Contractor's compliance with applicable laws and regulations.

6.16.2. These records include:

~~5.4.4.1~~6.16.2.1. Name;

~~5.4.4.2~~6.16.2.2. Position;

~~5.4.4.3~~6.16.2.3. Hire date;

~~5.4.4.4~~6.16.2.4. Wage and benefit records;

~~5.4.4.5~~6.16.2.5. Contractor Personnel qualifications, certifications, and training; and

~~5.4.4.6~~6.16.2.6. Contractor Personnel regarding attendance, discipline, drug and alcohol testing, and criminal violations that directly relate to the performance of the Contract Services.

6.16.3. All such records shall be available for inspection by CMTA upon its request during the Contractor's normal business hours.

6.16.4. The Contractor shall provide a staffing plan (CDRL ~~6.16.4~~6.15.4) for all functional areas of the contract, to include but not limited to:

~~5.4.4.7~~6.16.4.1. General Manager

~~5.4.4.8~~6.16.4.2. Transportation

~~5.4.4.9~~6.16.4.3. Maintenance of Rail Vehicle

~~5.4.4.10~~6.16.4.4. Dispatch

~~5.4.4.11~~6.16.4.5. Maintenance of Way

~~5.4.4.12~~6.16.4.6. Signals and Train Control

~~5.4.4.13~~6.16.4.7. Communication

~~5.4.4.14~~6.16.4.8. Safety and Training

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~~5.4.4.15-6.16.4.9.~~ Finance, Accounting and Administration

~~5.4.4.16-6.16.4.10.~~ Parts and Materials

6.16.5. The Staffing Plan shall include the roles of the manager, supervisor, foreman, inspector, etc. and front-line employees that will be used to perform the requirements of the contract. The plan shall be submitted to CMTA no later than 60 days NTP.

6.16.6. The Contractor shall also submit to CMTA a monthly staffing report (CDRL ~~6.16.6-15.6~~) containing authorized headcount by function and current Contractor Personnel lists.

6.17. Competency

6.17.1. All employees hired by the ~~Contractor~~ Contractor, or its subcontractors shall be qualified and experienced in the work for which they are ~~engaged, and engaged and~~ shall possess all necessary and current certifications.

6.18. Damage to CMTA Property

6.18.1. The Contractor's Personnel, or agents, consultants, suppliers, ~~Subcontractors~~ subcontractors or representatives of the Contractor shall not deface, damage, destroy, misuse, litter or vandalize rolling stock, stations, shops or equipment, hi-rail or machinery or any other part of the ~~Capital Metro~~ CMTA Railroad. This includes the application of unauthorized or inappropriate decals, advertising or other artwork.

6.19. Hiring of Existing Workforce

6.19.1. The Contractor shall evaluate the existing contractor's qualified personnel for positions under this scope of services. The Contractor shall submit its recommended list to rehire to CMTA approval (CDRL ~~6.19.1-6.18.4~~) no later than thirty (30-day) days after NTP.

6.19.2. The Contractor shall notify CMTA on the status and progress of the hiring process (CDRL ~~6.18~~ 19.2), no later than thirty (30) days after NTP.

6.20. Workforce Management

6.20.1. The requirements of the Management Services section of the Contract shall not be construed to:

~~5.4.4.17-6.20.1.1.~~ Impose a mandatory staffing level for the Contract Services throughout the term of this contract;

~~5.4.4.18-6.20.1.2.~~ Restrict the Contractor's ability to manage the number of positions and size of workforce it determines to be necessary to perform the Contract Services, as vacancies occur or as services are added or adjusted during the Term of the contract.

~~5.4.4.19-6.20.1.3.~~ Restrict the Contractor's ability to dismiss employees for cause.

6.21. Contractor Personnel Conduct

6.21.1. The Contractor shall employ individuals that can work in harmony with all other individuals employed by CMTA or by other contractors of CMTA. The Contractor agrees that all persons

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employed by it to manage or work on CMTA's premises shall conduct themselves, at all times, in an orderly and proper manner.

6.22. Conduct Unbecoming an Employee

6.22.1. Conduct Unbecoming of an Employee shall include, but not be limited to, the following behaviors:

~~5.4.4.20~~6.22.1.1. Misconduct towards a Customer or other person on the Service Property, including abusive, hostile, harassing, discriminatory, argumentative, or demeaning behavior.

~~5.4.4.21~~6.22.1.2. Failure to comply with the customer service standards, described in Contractor Customer Service Responsibilities of this Contract.

~~5.4.4.22~~6.22.1.3. Negligent performance of the Contract Services.

~~5.4.4.23~~6.22.1.4. Use or possession of illegal drugs or alcohol.

~~5.4.4.24~~6.22.1.5. Use or possession of firearms or other weapons.

~~5.4.4.25~~6.22.1.6. Dishonesty, including without limitation (i) theft, and (ii) the willful failure to accurately complete required reports.

~~5.4.4.26~~6.22.1.7. Disorderly conduct.

~~5.4.4.27~~6.22.1.8. Fighting.

~~5.4.4.28~~6.22.1.9. Insubordination.

~~5.4.4.29~~6.22.1.10. Criminal activity

~~5.4.4.30~~6.22.1.11. Vandalism or other intentional damage to Property or Third-Party property.

~~5.4.4.31~~6.22.1.12. Failure to make proper and/or required announcements.

6.22.2. The Contractor shall promptly investigate all reports of Conduct Unbecoming of an Employee, and shall institute appropriate corrective measures

6.22.3. The Contractor shall take steps to ensure that similar instances of Conduct Unbecoming of an Employee does not occur in the future.

6.22.4. The Contractor's Personnel shall not, while engaged in the performance of contract services, read personal material, watch or listen to television or other video devices, or use

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other electronic devices (such as cellular phones, personal digital assistants, tablet computers ~~eteetc....~~) for personal reasons.

6.22.5. The Contractor's Personnel shall not sleep or appear to ~~sleep, or~~ sleep or fail to perform duties in a timely fashion as assigned.

6.22.6. Uniformed Contractor Personnel must avoid congregating in groups in public spaces.

6.22.7. All Contractor Personnel who interact with Customers or the public, must conduct themselves with courtesy and decorum, dress appropriately for the provision of service to Customers, and wear a clearly visible identification badge.

6.22.8. All Contractor Personnel who interact with Customers or the public, while on duty, shall follow all ~~Capital Metro~~ CMTA HR policies (Exhibit J Attachments 21 and 36).

6.22.9. The Contractor shall develop and implement an audit plan and reporting protocols (CDRL 6.2422.9) that target employee conduct and appearance. The plan and protocols must be submitted for CMTA approval no later than 60 days after NTP.

6.22.10. The Contractor shall also, at the request of CMTA, in addition to instituting the corrective measures for any Contractor Personnel who engage in Conduct Unbecoming an Employee, or who CMTA deems unsatisfactory on any reasonable basis, prevent such Contractor Personnel from entering the Service Property.

6.23. Prohibited Conduct - Cause for Removal From Service

6.23.1. CMTA may require Contractor to immediately remove pending investigation, any operator from CMTA service for any one of, but not necessarily limited to, the following:

~~5.4.4.32~~ 6.23.1.1. Committing unsafe or inappropriate acts while providing service

~~5.4.4.33~~ 6.23.1.2. Failure to follow CMTA policies and procedures

~~5.4.4.34~~ 6.23.1.3. Cell phone use while operating CMTA rail vehicle, including texting and use of Bluetooth devices

~~5.4.4.35~~ 6.23.1.4. Conviction of any felony criminal offense

~~5.4.4.36~~ 6.23.1.5. Not in the approved uniform

~~5.4.4.37~~ 6.23.1.6. Failure to follow safety rules and regulations

~~5.4.4.38~~ 6.23.1.7. Failure to follow security policies, guidelines and procedures

~~5.4.4.39~~ 6.23.1.8. Notification of an active warrant from any law enforcement or judicial agency

6.24. Employment

6.24.1. The Contractor shall fill all Workforce Positions in compliance with the requirements of this contract, including the provision of weekly written reports to CMTA, updating its status of the

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hiring process. This shall be an agenda item at the Weekly Status Meeting described in Weekly Status Meetings of Mobilization.

6.24.2. The Contractor shall submit to CMTA a list of positions that the Contractor defines as "Safety Sensitive" (CDRL 6.2324.2) as defined by the FRA or DOT. This list shall include all subcontractor employees. This list shall be furnished prior to the commencement of the Mobilization period, but in no case later than 30 days NTP. All employees holding positions listed shall be subject to the Contractor's Drug & Alcohol Policy.

7. **TRANSPORTATION SERVICES**

7.1. The Contractor shall perform the Transportation Services for the Central Subdivision to ~~include:~~include train engineers and train engineer supervision.

7.2. The Contractor shall operate, manage and staff transportation Services within the service property.

7.3. The Contractor shall provide the Transportation Services in accordance with the Service Schedules and Special Events (**Exhibit J – Attachment 9**) as currently found on CMTA's public website and as revised during the Term of the Contract.

7.4. The Contractor shall develop and submit a Transportation Service Plan (CDRL 7.4) to CMTA for approval no less than 60 days after NTP. CMTA shall approve or return the Transportation Service Plan to the Contractor for revision no more than 30 days after submission.

7.5. The Transportation Service Plan shall include details of all train service, staffing, Engineer and Operational Efficiency Test Plans, a Drug and Alcohol test policy, an Attendance Control policy and a Code of Conduct. This plan must demonstrate compliance with all applicable federal, state, local CMTA regulations and guidelines.

7.6. The Contractor shall submit an update of the Transportation Service Plan annually on October 1st of each year for CMTA review and written approval. Updates to the Transportation Service Plan may be required more often as required by Service Changes or as required by notice in writing by CMTA's Vice President of Rail Operations or designee.

7.7. Each update shall address anticipated schedule changes due to special events, and any proposed changes needed to support work having a direct impact on service delivery.

7.8. **Supervisor and Manager**

~~5.4.5.7.8.1.~~ _____ All Contractor Transportation Department managers and supervisors shall be fully qualified DMU locomotive engineer within nine (9) months after the service commencement

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date and hi-rail qualified/certified no later than ninety (90) days after the service commencement date.

~~5.4.6.7.8.2.~~ Any proposed changes to the TSSP must be approved in writing by CMTA.

8. COMMUTER TRAINS

8.1. Service Recovery Trains

8.1.1. The Contractor shall have one service recovery DMU prepared, serviced, staged, crewed and available for train substitution in the event any condition which requires a substitution or additional service unless approved in writing by CMTA.

8.1.2. The service recovery train crew shall be stationed near the service recovery train in order to expedite departure of the train when called to duty.

8.2. The Contractor may elect to operate non-revenue trains for the purpose of familiarizing their personnel with DMUs. This will be done at no additional cost to CMTA.

9. DISPATCHING SERVICES

9.1. The Contractor shall operate and maintain the Dispatch Control Center (DCC) located at North Operations facility at 9315 McNeil Road, Austin, Texas continuously (24 hours per day, 7 days per week, and 365 days per year). From the Dispatch Center, the Contractor shall provide train dispatching services for the entire 112 miles of the CMTA Railroad (CMTY), which includes MP 21 to MP 127.70, and 6 miles branch to Marble Falls.

9.2. The Contractor's personnel shall be responsible for direction, supervision and control over the safe and efficient movement of all trains and on-track vehicles; protection of all other on-track activity on the ~~Capital Metro~~CMTA Railroad under the dispatch control including but not limited to movement of commuter trains, on track equipment, excursion trains and freight trains; and notification of all operating rule violations. All such dispatch services shall be governed by and subject to all current operating and safety rules, orders, procedures, and regulatory standards, applicable to the ~~Capital Metro~~CMTA Railroad. Average annual freight carloads are approximately 45,000.

9.3. The Contractor shall dispatch Rail security on the official CMTA radio communications system and monitor for emergency alert activity from security vehicles.

9.4. All such dispatch services shall be governed by and subject to all current operating and safety rules, orders, procedures, and regulatory standards, applicable to the ~~Capital Metro~~CMTA Railroad.

9.5. The Contractor shall dispatch freight trains operating on the CMTA railroad. The Contractor shall be responsible for coordination of schedules and operations to ensure freight operations are not delayed. The Contractor shall maintain required crew, consist and delay records for all freight train movements on the ~~Capital Metro~~CMTA Railroad.

9.6. CMTA Rail Operations personnel may, at any time, enter the Dispatch Center. CMTA shall provide necessary pass keys and/or pass codes to the Contractor for the purpose of entering the Dispatch Centers.

9.7. The Contractor's dispatchers shall maintain and provide to CMTA, upon request records pertaining to the dispatch center, all FRA-required logs and records including, but not limited to, logs of train

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movements, Form D movement permits, grade-crossing failures, and notes of extraordinary and unusual events to the Vice President of Rail Operations or designee.

- 9.8. The Dispatch Control Center shall be supervised by management-level Contractor Personnel who are:

~~5.4.7.9.8.1.~~ 5.4.7.9.8.1. Familiar with the physical characteristics of the ~~Capital Metro~~CMTA Railroad;

~~5.4.8.9.8.2.~~ 5.4.8.9.8.2. Sufficiently qualified as a dispatcher on CTC and TWC territory.

9.9. *Intentionally left blank*

9.10. *Intentionally left blank*

- 9.11. The Contractor shall observe the terms of CMTA Temporal Separation Plan (**Exhibit J-Attachment 15**).

9.12. When normal train operations are disrupted, the Contractor shall use best judgment to move passengers in the most expeditious and safe manner possible. If a bus bridge is used, CMTA will assume the cost of bus bridge services.

9.13. Contractor personnel and those working in the Dispatcher Offices must be dressed in proper business casual attire and maintain a professional demeanor at all times.

9.14. **Incident Management Notification**

9.14.1. In the event of Service Disruptions ~~and delays~~ of freight, excursion or commuter rail services, the dispatcher shall notify the Vice President of Rail Operation or designee, notify the public at stations and passengers on-board trains, investigate such delays and

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disruptions, and prepare reports, as set forth below in accordance with the incident notification procedures.

9.14.2. CMTA reserves the right to change the notification procedures identified herein at any time during the Contract Term.

~~5.4.9.9.14.3.~~ Contractor shall provide notification to all required personnel and agencies.

~~5.4.10.9.14.4.~~ Contractor shall record all incidents and notification information in the CMTA provided rail incident management system (OrbCad).

~~5.5.9.15.~~ Notification of Service Delays to CMTA

~~5.5.1.9.15.1.~~ Notification Sequence – The Contractor shall provide immediate notice to CMTA of service delays.

~~5.5.2.9.15.2.~~ The Contractor shall generate Delay Reports (CDRL 9.15.2) utilizing the Incident Management System. Each delay shall be classified as per the incident notification procedure.

~~5.5.3.9.15.3.~~ Delay Reports shall include all delays, regardless of duration. Delay Reports shall be produced in conformance with the requirements identified in (On Time Performance) of the Transportation Services section of this Contract.

9.16. **Incident Management (Service Recovery)**

9.16.1. In the event of a Service Disruption in which there are events or occurrences on ~~or off~~ the Central Subdivision including, without limitation, collisions, derailments, fires, fatalities or injuries, or other emergencies whose potential impact on service requires close coordination of multiple activities, the Contractor shall designate a senior official to oversee management of the incident and to act as a single point of contact for CMTA with respect to the incident (“Incident Commander”). In addition to Service Disruptions, the ~~contractor~~ Contractor ~~will~~ shall notify the Vice President of Rail Operations or designee of any event resulting in the use of a bus bridge (**Exhibit J – Attachment 10**) for commuter train service.

9.16.2. The Contractor shall follow the incident management, notification and reporting procedures set forth herein.

9.17. **Incident Notification Procedures**

9.17.1. The Contractor shall develop and implement incident management and external notification procedures (CDRL 9.17.1) which will address delays, on-board trains, whenever delays are in excess of five minutes and provide updates every 10 minutes until the delay has been resolved. The procedures will be submitted to CMTA 60 NTP.

9.17.2. The Contractor shall also notify Customers of potential delays immediately upon becoming aware of such potential delays. Notification shall be provided regardless of whether the event

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is considered a Service Disruption, and shall be delivered in accordance with the Contractor Customer Service Responsibilities section of this Contract.

9.17.3. Following a significant delay, series of regular delays, or at the direction of CMTA, the Contractor shall provide information to customers through the use of the CMTA public outreach staff.

~~9.17.4.~~ 9.17.4. The ~~contractor~~ Contractor shall record all incidents in the incident management system (OrbCad).

~~5.6.9.18.~~ 5.6.9.18. **Public Information Measures**

~~5.6.4.9.18.1.~~ 5.6.4.9.18.1. The Contractor shall provide and distribute such information as is directed by the CMTA to transmit to the public, including information concerning any disruptions and resulting delays due to emergencies or service disruptions, in the form of station postings, and visual messages and otherwise render assistance monitoring and supervising the service. At the request of CMTA, the Contractor shall distribute information, including passenger comment cards, to the public. Editorial content of supplemental information to the public is at the sole discretion of CMTA. No employees of the Contractor shall interface with the media without the consent of the CMTA. The Contractor shall install CMTA-approved promotional materials or public information notices on Central Subdivision and Service Equipment at the request of CMTA. The Contractor shall not release any statistical data or other information to the media or any other third-party without the prior approval of CMTA. The Contractor or its employees shall not engage with the media regarding CMTA matters. All media requests regarding CMTA shall be referred to the CMTA's Public Information Officer.

~~5.7.9.19.~~ 5.7.9.19. **Coordination with CMTA Freight Provider and Excursion Train Provider**

~~5.7.4.9.19.1.~~ 5.7.4.9.19.1. The Contractor shall conduct quarterly ~~meeting~~ meetings with the freight contractor, ~~ASTA~~ Austin Steam Train Association (ASTA) and CMTA to discuss operational issues from the prior quarter and to address any issues of concern and future plans. Written minutes of such meetings must be prepared by the ~~contractor~~ Contractor and made available to CMTA.

~~6.10.~~ 6.10. **MAINTENANCE OF WAY SERVICES (CONSISTS OF TRACK, BRIDGES, AND CROSSINGS SURFACES)**

~~6.1.10.1.~~ 6.1.10.1. The Contractor shall perform track inspection and maintenance, special work inspection and maintenance, bridge inspection and maintenance, culvert inspection and maintenance, grade crossing surface inspection and maintenance, drainage ditch inspection and maintenance, vegetation control and rail polishing on the contract Service Property as part of its maintenance way services responsibilities under this contract. Contractor is to assume 45,000 average carloads annually.

~~6.2.10.2.~~ 6.2.10.2. As part of the inspection and maintenance requirements of this contract, the Contractor shall ~~perform~~ provide material and labor to complete the following maintenance of way services on the contract Service Property every contract year:

10.2.1. Install 21,100 linear feet, of new 115# or 136# rail ~~Anchor~~

~~6.2.4.10.2.2.~~ 6.2.4.10.2.2. ~~Anchor~~ and spike two track miles

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- 10.2.3. Install 7500 mainline rail ties
- 10.2.4. Tamp and surface six central subdivision track miles
- 10.2.5. Replace two grade crossings (all associated materials). Installation of a double-tracked grade crossing shall be priced as optional work. The price for optional work shall only include the incremental increase of the costs associated with the additional track and wayside systems recognizing that such effort is not double the effort of a single grade crossing.
- 10.2.6. Replace ten (10) failed or blocked culverts
- 10.2.7. Reshape/contour five miles of track side drainage ditches
- 10.3. The ~~contractor~~Contractor shall conduct all Service Property Maintenance of Way inspection, maintenance and replacement services in accordance with all applicable federal, state, municipal AREMA, APTA, FRA, and CMTA laws rules, regulations, requirements and industry recommended best practices. CMTA and the Contractor shall coordinate on the standards and best practices applicable to the Service Property.
- 10.4. The Contractor shall comply with all applicable federal, state, local, industry and CMTA safety requirements, regulations, best practices or guidelines relating to the maintenance of the Service Property including but not limited to safety, environmental and other requirements, regulations, standards, or guidelines promulgated by FRA, AREMA, EPA, APTA, TXDOT, ADA, FTA, TCEQ or DOT as they pertain to MOW. CMTA and the Contractor shall coordinate on the standards and best practices applicable to the Service Property.
- 10.5. The Contractor shall inspect, repair and maintain the Service Property in accordance with the procedures and standards set forth in this Contract. The Central Subdivision must, at all times, be suitable for the provision of commuter, freight and excursion rail service.
- 10.6. The Contractor shall maintain the condition and availability of the infrastructure assets of CMTA for the operation of commuter, excursion, and freight rail service, and shall not defer maintenance of these assets so as to reduce the Contractor's costs, or for any other reason to the detriment of CMTA or the performance of the Contract Services. These assets include the Service Property assets themselves; the inventories of material and spares; the intellectual property; the

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control of the assets' configuration; and the information required for a safe, quality, and cost-effective passenger and freight rail service on the Central Subdivision.

10.7. The Contractor shall:

10.7.1. Comply fully with the terms of any manufacturers' warranty on the Service Property and any other property used in the provision of this Contract.

10.7.2. Cooperate with CMTA regarding the fulfillment of any warranty obligations; and administer such warranties on behalf of CMTA; and

10.7.3. Provide CMTA with any information necessary to the administration of any such warranties at the termination date of this Contract.

10.8. The Contractor shall perform and oversee Maintenance of Way activity within the Service Property, include all freight tracks, and crossing surfaces.

10.9. The Manager of Maintenance of Way shall have his/her office located at 9315 McNeil Road, Austin, TX along with his/her staff and technical staff.

10.10. The Contractor shall not establish any reporting location or staging area, nor set up any office or storage trailer on the Service Property or any other property without the prior written approval of the Vice President of Rail Operations or designee.

10.11. The Contractor shall maintain memberships in the AAR, AREMA, APTA and the American Shortline Railway Association.

10.12. The Contractor shall enter five years of historical maintenance data into the Asset Management System within the first 60 days of service commencement date. This information may reside in several different databases and, in some cases, hardcopy form.

10.13. Where additional historical data is required for scheduling of tests, inspections, and maintenance activities, such as rail and tie maintenance, the Contractor shall be required to enter data from manual records.

10.14. All required tests, inspections, and preventive maintenance activities shall be scheduled from the historical last date. All monthly, quarterly, and yearly required tests, inspections, and preventive maintenance records shall be delivered to the Agency electronically, monthly, quarterly and annually.

10.15. The Contractor shall establish computerized work orders in the Asset Management System.

~~10.16. The Contractor shall provide CMTA weekly maintenance activity reports for all scheduled MOW work.~~

10.17. **Maintenance of Way Plan (MOW)**

10.17.1. The Contractor shall submit the Maintenance of Way Plan (CDRL 10.17.1) to CMTA for review and approval within 90 days after NTP. Thereafter, the Contractor shall submit a preliminary draft of the proposed Maintenance of Way Plan on or before December

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1st of each year and the final draft on or before February 1st of each year after approval through the Configuration Management Process.

10.17.2. The Maintenance of Way Plan shall identify the inspection and maintenance activities to be undertaken by the Contractor; maintenance performance standards; design standards and requirements, frequencies of tasks; specific work schedules; proposed work windows, track outages or service diversions; and EIC requirements, RWIC requirements, CMTA will work collaboratively with the Contractor to finalize this scope, as it may deviate from the quantities listed in Section 10.2; the price for the effort will be negotiated at the time, using the pricing details provided in the most current Exhibit A as the basis for unit costs.

10.17.3. The Maintenance of Way Plan shall include, but not be limited to, the following components:

~~6.2.1.1.~~10.17.3.1. Rail Replacement Plan (CDRL 10.17.3.1)

~~6.2.1.2.~~10.17.3.2. Tie and OTM Replacement Plan (CDRL 10.17.3.2)

~~6.2.1.3.~~10.17.3.3. Grade Crossing Surface Improvement Plan (CDRL 10.17.3.3)

~~6.2.1.4.~~10.17.3.4. Tamping and Surfacing Program (CDRL 10.17.3.4)

~~6.2.1.5.~~10.17.3.5. Rail Polishing Program (CDRL 10.17.3.5)

~~6.2.1.6.~~10.17.3.6. Drainage Maintenance Plan (CDRL 10.17.3.6)

~~6.2.1.7.~~10.17.3.7. Bridge Maintenance Plan (CDRL 10.17.3.7)

~~6.2.1.8.~~10.17.3.8. Timber Bridge Deck Plan (CDRL 10.17.3.8)

~~6.2.1.9.~~10.17.3.9. Culvert Maintenance and Replacement Plan (CDRL 10.17.3.9)

~~6.2.1.10.~~10.17.3.10. Vegetation Control Plan (CDRL 10.17.3.10)

~~6.2.1.11.~~10.17.3.11. 49 CFR 213 CWR Plan (**CDRL 10.17.3.11**) Provide separately, final draft on or before August 20th.

~~6.2.1.12.~~10.17.3.12. Rail Grinding Plan (CDRL 10.17.3.12)

~~6.2.1.13.~~10.17.3.13. Trash Removal Plan (CDRL 10.3.13)

10.17.4. The Contractor shall provide annual updates to the Maintenance of Way Plan (CDRL ~~10.17.1.~~10.17.1.).

10.17.5. The Contractor shall provide monthly progress updates on the Maintenance of Way Plan to CMTA that details both work performed over the last month and work expected to be completed in the next month.

10.17.6. On or before November 1st of each year, the Contractor shall provide a full accounting of the completion status of all items in that year's Maintenance of Way Plan. Items not completed—and their associated costs—shall be rolled over to the following year. Any

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change in the unit cost of an item which has been rolled over will be borne by the Contractor unless CMTA caused or directed the item not to be completed in the current year.

10.17.7. The Contractor shall not stockpile debris and spoils on its property. The Contractor is responsible for disposal of all salvage materials.

10.17.8. The Contractor shall remove all trash and debris immediately, and in no event longer than 24 hours after discovering same or receiving notice from CMTA of the existence of same.

10.17.9. The Contractor shall not apply decals, bumper stickers, or other materials not related to the Contract Services to any surface on the railroad property, including non-revenue vehicles and work equipment. The Contractor shall remove all such materials immediately upon discovery or notification.

10.17.10. The Contractor shall remove graffiti expeditiously, and in no event longer than 24 hours after receipt of a report of graffiti at any location on the owned by ~~Capital Metro~~CMTA on the Service Property. The Contractor shall prioritize the removal of graffiti but in every ~~case~~case, graffiti containing ethnic, racial, obscene or otherwise offensive content shall be removed immediately upon notification or discovery. Graffiti can be temporarily covered until the entire surface can be repainted.

10.17.11. All maintenance of way reporting locations, tool houses, and shop facilities, including buildings, equipment, utilities, sanding facilities, fueling facilities and train storage areas, shall be kept clean.

10.18. Corrective Maintenance – Damaged Components

~~6.2.2.10.18.1.~~ The Contractor is responsible to for repairing all damage to the service property necessary to restore and maintain rail service disrupted by acts of God, weather, vandalism, incidents, accidents, trespassers, debris strikes etc.

~~6.2.3.10.18.2.~~ 10.18.2 CMTA will reimburse the contractor for any work that exceeds \$25,000 per incident, per location in accordance with Exhibit E-6 of this contract. The contractor is financially responsible for an amount not to exceed \$25,000 per incident per location (within 2500 feet).—The ~~contractor~~Contractor ~~will~~shall be responsible at its cost to repair any damage to the rail track, the DMU vehicles, and ancillary equipment (e.g. signal houses, crossing gates, signage) to the extent such damages arise out of or result from Contractor's actual negligence or willful misconduct. Contractor shall be responsible at its cost to repair any damage to the rail track, the DMU vehicles, and ancillary equipment (e.g. signal houses, crossing gates, signage) up to the amount of \$25,000 per incident to the extent caused by the following events that are outside the control of Contractor: vandalism, trespassers, debris strikes, washouts, floods, derailments, wind events, tornadoes, hurricanes, birds strikes, animals, and motor vehicle collisions that damage the track, signal gates, or signage. For such damages, amounts exceeding \$25,000 Capital MetroCMTA will pay be responsible for costs exceeding \$25,000 the dollar difference upon invoice and proper supporting documentation. When CMTA is reimbursed by insurance or a third-party for costs incurred by the Contractor under \$25,000, CMTA will reimburse the Contractor for monies received after all CMTA costs are fully recovered. CMTA will make a good-faith effort to pursue reasonable and appropriate Third-Party reimbursements. However, CMTA is not obligated to pursue the reimbursements.

~~6.2.4.10.18.3.~~ The ~~contractor~~Contractor shall provide repairs associated with the conditions above to the service property and infrastructure inclusive of labor (overtime), material and

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equipment. Under no circumstances will the ~~contractor~~Contractor submit additional costs for equipment or personnel included in the base contract.

10.19. Maintenance of Way Standards

10.19.1. The Contractor shall maintain all of the Service Property main track and sidings at CMTA Class IV or higher. The freight interchange tracks and yard tracks shall be maintained to CMTA Class II. Freight only tracks located next to the commuter tracks shall be maintained at CMTA Class III.

10.19.2. Inspection and test dates shall be scheduled from the last inspection date, not from the Services Commencement Date.

10.19.3. The Contractor shall notify CMTA when a temporary speed restriction is imposed for any reason, the Contractor shall submit to CMTA a schedule for performing the work necessary to remedy the need for each such temporary speed restriction. The Contractor shall perform the work in accordance with the approved schedule. Designation of a temporary speed restriction as permanent requires prior written CMTA approval.

10.19.4. The Contractor shall inspect, repair and certify all CMTA hi-rail gear annually.

10.20. Wrecks/Derailments

10.20.1. The Contractor shall clear wrecks and derailments that occur in the Service Property as soon as possible to restore operations.

10.21. ~~Employee~~Roadway Worker in Charge/Flag Protection and Track Outage

10.21.1. The Contractor shall provide all ~~EICs~~RWICs for its own workforce as well as the subcontractor providing services associated with this Contract.

10.21.2. At a minimum, the ~~contractor~~Contractor shall provide three (3) full time dedicated ~~employees~~roadway workers in charge (~~EIC~~RWIC) personnel to CMTA. Employees must be GCOR rules and territory qualified. When not performing ~~EIC~~RWIC responsibilities will be assigned maintenance of way activities by the ~~contractor~~Contractor.

10.21.3. CMTA shall have the right to ask for additional ~~EICs~~RWICs and/or ~~EIC~~RWIC support for any and all projects that require additional manpower. These services will be provided to CMTA or those designated by CMTA at no cost as long as no more than three ~~EICs~~RWICs are being used at one time.

10.21.4. CMTA may also direct the ~~contractor~~Contractor to provide additional ~~EIC~~RWIC upon 60 days' notice.

10.21.5. The Contractor shall provide ~~EIC~~RWIC services for work performed by Third Parties on the Central Subdivision. ~~EIC~~RWIC for bridge work done on Central Subdivision by CMTA shall be performed by the Contractor as part of the contract. ~~EIC~~RWIC for any other work performed by Third Parties shall be compensated by the Third Party under separate agreement.

10.21.6. The Contractor must attend weekly Track Allocation and ~~Site-Specific~~Site-Specific Work Plan meetings.

10.21.7. The Contractor shall perform all maintenance work so as to mitigate the impact on, or disruption to Central Subdivision Rail Services to the extent practicable. Track outages for

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work will be approved by CMTA through the Track Allocation meetings. The Contractor shall follow the Contractor Interface with Rail Operations Policy and Procedures when requesting track outages. The track outage request shall be submitted in the form specified in the Contractor Interface with Rail Operations Policy and Procedures (**EXHIBIT J ATTACHMENT 42**).

10.21.8. The Contractor shall explore all available alternatives to the track outages and shall provide the reasons that such alternatives are not viable. In the event a track outage is required to respond to an Emergency, the Contractor may commence such work immediately, and shall provide notification to CMTA Vice President of Rail Operations or designee as soon as practicable.

10.22. Track Inspection

10.22.1. The Contractor shall conduct all inspections.

~~6.2.4.1.~~10.22.1.1. Supervisory track and right of way inspection reports (CDRL 10.22.1.1) shall be performed in accordance with FRA **and submitted quarterly report with CDRL 10.22.2 Summary Track Inspection.**

~~6.2.4.2.~~10.22.1.2. Grade crossing and surface inspections shall be performed annually.

~~6.2.4.3.~~10.22.1.3. The Contractor shall conduct special track inspections during and immediately after severe weather conditions. The Contractor shall promptly submit a report of observed conditions that could affect railroad operations and identify corrective actions required.

~~6.2.4.4.~~10.22.1.4. The Contractor shall perform joint switch inspections **monthly quarterly** with representatives of both track and signal departments.

10.22.2. The results of all inspections shall be recorded on the prescribed form, including digital photographs as appropriate, and signed by inspector(s) and submitted to the appropriate agency(s) with a summary report of all inspections submitted **monthly quarterly** to CMTA (CDRL 10.22.2). The Contractor shall use the Asset Management System to reflect the fact that the inspections occurred and detail any conditions found during the inspections.

10.23. Rail

10.23.1. The Contractor shall conduct ultrasonic testing (CDRL 10.23.1) twice annually of the entire Central Subdivision on commuter and freight track continuous welded rail ("CWR") and jointed rail, but not more than eight months apart.

10.23.2. The Contractor shall ultrasonically test main line replacement rail before installation.

10.23.3. The Contractor shall repair all defects identified during ultrasonic testing in accordance with the latest FRA requirements, without any additional cost to CMTA. In no

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case shall the Contractor allow a temporary repair to a defect revealed during ultrasonic testing to remain in track longer than 30 days.

- 10.23.4. The Contractor shall submit a report detailing results of rail testing and corrective actions taken. The Contractor shall submit such reports within two weeks of testing and corrective measures employed. The report shall also contain the raw data from the testing.

~~The Contractor shall install 21,100 linear feet of new 115# or 132# rail of OTM, each Contract Year.~~

- 10.23.5. The Contractor shall keep replacement rails neatly stacked in accordance with AREMA standards. The Contractor shall stack replacement rails at only CMTA approved locations. The Contractor shall include proposed rail storage locations as part of the rail replacement plan.

10.24. TimberTies and Surface

- 10.24.1. The Contractor shall install 7500 new ties each contract year. ~~The Contractor shall install these ties~~ in accordance with 10.2.3 and the Tie Replacement Plan. The

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Contractor ~~will~~shall use this material in such a way to maintain an adequate supply of ties during the entire contract year.

- 10.24.2. Main line rail ties shall be replaced with new, #1 grade 7" X 9" X 8 ½' lengths, mixed hardwood, end plated, creosoted (7.5# or refusal), unless otherwise approved by CMTA.
- 10.24.3. The Contractor shall install OTM and granite ballast sufficient to support 7500 ties, replacement, and installation during the contract year as part of the base contract.
- 10.24.4. The Contractor is responsible for tie disposal and shall begin concurrently with tie installation and shall continue without interruption until complete.
- 10.24.5. Tie replacement incidental to other work including, but not limited to grade crossing replacement, switch panel replacement, joint ties.
- 10.24.6. The Contractor shall perform all tie replacement in conformance with AREMA recommended practices and track buckling procedures in the MOW Services Standards.
- 10.24.7. Switch timber shall be changed as required to maintain the Central Subdivision according to standard and recommended practices.
- 10.24.8. Switch Ties shall be replaced with new, #1 grade 7" X 9" X assorted lengths, mixed hardwood, end plated, creosoted (7.5# or refusal), unless otherwise approved by CMTA.
- 10.24.9. The Contractor shall be responsible for the purchase, delivery, and installation of all inventory including rail, ballast, ties, timbers and OTM.
- 10.24.10. Within 30 days of removal, the Contractor shall sort all removed ties and timbers, separating ties to be reused on the Service Property from ties for disposal.
- 10.24.11. Within 30 days of removal, the Contractor shall stack and stockpile neatly ties to be reused. The Contractor must dispose of all remaining ties. Wooden ties and timber shall be disposed of in a manner in compliance with all federal, state, and local regulations.
- 10.24.12. The Contractor shall provide inspection, maintenance, and replacement services for all ties and timbers in order to maintain the Central Subdivision at CMTA Class IV standards.

10.25. **Track Structure**

- 10.25.1. Gauge rods are prohibited from use without prior CMTA approval. Discovery by the Contractor of an improperly anchored track shall require the implementation of a temporary speed restriction and immediate notification of the condition to the Vice President

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of Rail Operations or designee. The Contractor shall perform corrective measures to anchor the track in accordance with all applicable standards and recommended practices.

- 10.25.2. The Contractor shall test with the geometry car annually.
- 10.25.3. Discovery by the Contractor of any curves not spiked to ~~CMTA~~CMTA, and applicable standards or recommended practices shall require the Contractor to bring the track up to all applicable standards within thirty (30) days.
- 10.25.4. The Contractor shall perform all tamping and surfacing -up to 6 miles of track on the service property per contract year in order to maintain the central corridor, mainline track and sidings to CMTA Class IV condition.
- 10.25.5. The pre-existing temporary speed restrictions that are in existence on the Commencement Date shall be removed as quickly as practical. The Service Contractor shall submit a schedule for completion of this work (CDRL 10.25.5) no later than 120 days after NTP. This schedule shall be included in the initial assessment and subject to CMTA approval.
- 10.25.6. Temporary speed restrictions imposed by the ~~contractor~~Contractor shall be corrected within ~~30~~seven (7) days from the date the speed restriction was imposed. with the exception of speed restrictions which require a work window to make the necessary repairs, such as bridges or road crossings. In these exceptional cases, the Contractor shall request an extension of the seven (7) day requirement. The extension request shall not exceed thirty (30) days.
- 10.25.7. Turnouts shall always be resurfaced and realigned by the Contractor as part of any re-timbering work and included within the submitted work by schedule.
- 10.25.8. The Contractor shall keep all frogs, switch points and stock rails ground in accordance with CMTA Class IV Standards as part of the required inspection and maintenance services.
- 10.25.9. The Contractor shall maintain, repair or replace rail lubricators. All replacement materials shall be of equal quality or better. Lubricating materials shall be furnished and installed by the Contractor.
- 10.25.10. The Contractor shall perform inspection and maintenance of the track turnouts, crossovers and sidings in order to maintain the Service Property at CMTA Class IV or better.
- 10.25.11. All switch components and other track materials removed from track and deemed as reusable by mutual agreement of CMTA and the Contractor shall be repaired for reuse by the Contractor and returned to inventory. Repaired and refurbished inventory reclaimed to inventory shall be tracked as such in the Asset Management System.

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CMTA Commuter Corridor Track Standards

	Speed					mph
	Class 1	Class 2	Class 3	Class 4	Class 5	
	0-15	> 15-30	> 30-60	> 60-80	> 80-90	
§ 213.53 Gage						
The gage must be at least	4'8"	4'8"	4'8"	4'8"	4'8"	
But not more than	4' 9.75"	4' 9.5"	4' 9.5"	4' 9.5"	4' 9.5"	
§ 213.55 Alignment						
Tangent track						
The deviation of the mid-offset from a 62-foot line may not be more than	2.50	2.00	1.50	1.00	0.75	inches
Curved track						
The deviation of the mid-ordinate from a 31-foot chord may not be more than	1.75	1.50	1.00	0.625	0.50	inches
The deviation of the mid-ordinate from a 62-foot chord may not be more than	2.50	2.00	1.50	1.00	0.75	inches
§ 213.57 Curves; elevation and speed limitations						
The maximum crosslevel on the outside rail of a curve may not be more than	6.00	6.00	6.00	6.00	6.00	inches
The maximum operating speed for each curve may be determined by the following formula	$V_{\max} = \sqrt{\frac{E_a + 4}{0.0007D}}$ <p style="font-size: small; margin: 0;"> V_{max}= Maximum allowable operating speed (miles per hour) E_a= Actual elevation of the outside rail (inches) D = Degree of curvature (degrees) 4 = 4 inches of unbalance </p>					
§ 213.63 Track surface						
Run off						
The runoff in any 31 feet of rail at the end of a raise may not be more than	3.00	2.00	2.00	1.50	1.00	inches
Profile						
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than	2.75	1.75	1.25	1.00	1.00	inches
Crosslevel						
The deviation from zero crosslevel at any point on tangent or reverse crosslevel elevation on curves may not be more than	2.00	1.75	1.25	1.25	1.00	inches
Warp						
The difference in crosslevel between any two points less than 62 feet apart may not be more than	2.00	1.75	1.75	1.75	1.25	inches
Where determined by engineering decision prior to the promulgation of this rule, due to physical restrictions on spiral length and operating practices and experience, the variation in crosslevel on spirals per 31 feet may not be more than	1.25	1.00	1.00	1.00	0.75	inches
Track Structure	Continuous welded rail (CWR)					
Special Track Work	The CFR requirements shall apply.					

Figure 1 CMTA Commuter Corridor Track Standards

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10.26. **Maintenance of Drainage Systems**

- 10.26.1. The Contractor shall keep all Drainage Systems on the Service Property clean and free of obstructions.
- 10.26.2. When the Contractor replaces any Drainage System or portion thereof, the system shall be designed and constructed based on an evaluation of the current drainage conditions and applicable regulatory requirements.

10.27. **Structural Inspections for Bridges**

- 10.27.1. The Contractor shall perform structural inspections on all bridges in the Service Property, and all TxDOT and private overhead bridges to ensure safety. All reports shall be made available to CMTA and maintained in the CMTA Asset Management System. The Contractor shall submit a structural inspection report (CDRL 10.27.1).
- 10.27.2. The Contractor shall be responsible for all inspections required by the CMTA Railroad Bridge Safety Management Program.
- 10.27.3. CMTA may hire a Third Party to perform additional inspections as necessary. These inspections are not considered part of this Contract. The inspection reports will be made available to the Contractor upon request.

10.28. **Bridge Maintenance and Repair**

- 10.28.1. The Contractor shall submit a bridge maintenance and repair plan (CDRL 10.28.1) annually, with priorities based on the condition of the bridges as detailed in the annual inspections. The Contractor shall submit to CMTA a preliminary plan no later than 120 days after NTP.
- 10.28.2. The Contractor shall conduct bridge maintenance activities and repairs on all CMTA-owned bridges in the Service Property to maintain the bridges to a minimum bridge condition rating of three or better and to maintain their designated load carrying capacity of

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263,000 or 286,000. Comply with requirements of FRA, CMTA, and AREMA recommended practices.

10.28.3. The Contractor shall repair or replace defective components of the bridges. These include but are not limited to the following:

~~6.2.4.5~~-10.28.3.1. Wood Timber Bridges: ties and tie spacers, caps, stringers, piles, bracing, hardware, ballast stops, wood decks, headwalls, wing walls.

~~6.2.4.6~~-10.28.3.2. Steel Bridges: beams, girders, bracing, connections, beam seats, abutments, foundations, piers, headwalls, wing walls and any other defects.

~~6.2.4.7~~-10.28.3.3. Concrete Bridges: Replace or repair abutments, piles, piers, beams, planks, walkways and any other defects.

10.28.4. Maintain required surface and line of the track over bridges to CMTY Class IV Standards.

10.28.5. The Contractor shall perform regular maintenance such as clearing of vegetation, maintaining railroad clearance, removal of graffiti and scour.

10.28.6. The Contractor shall maintain all retaining walls, back walls, wing walls, abutments, bracing, track structures and signal apparatus, and other structures, and appurtenances, and maintain bridge mile markers and clearance designations.

10.28.7. The Contractor shall keep all bridge seats, bearings and abutments clean and free of debris.

10.28.8. The Contractor shall maintain all bridge stairs, walkways, sidewalks, catwalks, railings and other bridge attachments and devices in a state of good repair.

10.28.9. The Contractor shall inspect and repair structures resulting from extreme weather conditions.

10.29. **Inspection and Maintenance of Culverts**

10.29.1. The Contractor shall inspect and maintain all culverts located on the Service Property. As used herein, a "Culvert" is any undergrade structure less than 10 feet in span. All undergrade structures greater than or equal to 10 feet in span will be inspected and maintained as bridges in accordance with the Railroad Bridge Safety Management Program.

10.29.2. The Contractor shall annually inspect, clean and perform maintenance and repairs as needed on all Culverts contained within the Service Property. The Contractor shall maintain positive drainage and clear any obstructions that hinder the free movement of water.

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Inspections shall include digital photographs of the Culvert condition. The Contractor shall record all inspection and repair activity in the Asset Management System.

10.29.3. The Contractor shall replace failed Culverts with a culvert of equal size unless approved by CMTA.

10.29.4. The Contractor shall keep all Culvert approaches and outfalls free and clear of all debris and vegetation.

10.29.5. The Contractor shall coordinate all maintenance, repair and replacement activities with CMTA Vice President Rail Operations or designee and all applicable permitting agencies.

10.30. **Miscellaneous**

10.30.1. The Contractor shall maintain and install all signs located on right of way and shall repair damaged and replace missing signs.

10.30.2. The Contractor shall not construct or make modifications to any facility that reduces existing clearance dimensions at any location along the Right of Way, without the prior written approval of CMTA.

10.30.3. The Contractor shall maintain right of way fences, fence gates and wired mesh.

10.30.4. The Contractor shall maintain storage facility fencing shall be maintained.

10.30.5. Scrap materials shall be removed from the Right of Way by the Contractor within 30 days from conclusion of work.

10.30.6. The Contractor shall report to CMTA Security, and shall attempt to control, illegal dumping activities, trespassing, and unauthorized use of Property.

10.30.7. The Contractor shall secure all storage facilities with CMTA approved locking devices

10.30.8. The Contractor shall keep the Right of Way free and clear of debris and rubbish. The Contractor shall immediately respond to CMTA reports of debris or rubbish on the Right of Way.

10.30.9. The Contractor shall not store materials awaiting installation along the Right of Way for more than 60 days, unless otherwise agreed to by CMTA. Any material that is considered a safety hazard by CMTA shall be immediately removed or repositioned.

10.31. **Vegetation Control**

10.31.1. The Contractor shall submit a Vegetation Control Plan (VCP) to CMTA for review and approval 90 days after NTP. The plan shall provide a schedule for vegetation control within the railroad property boundaries in the central subdivision. The Contractor shall provide mechanical and chemical vegetation control, including on-track application of herbicides and brush-cutting equipment from the property line and to a height of 22 feet on either side from top of rail. Vegetation control of the right-of-way consists of the control of all grass and brush and trees, etc. growing on or over CMTA Service Property.

10.31.2. The Contractor shall maintain vegetation on CMTA railroad property within 25' of the centerline of the nearest track by means of weed spray to kill vegetation. Spraying shall

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not take place on days with winds, or wind gust in excess of five (5) mph. Spraying shall be planned such that application will follow manufacturer's product instructions, including weather conditions. Contractor shall be mindful of weed spray at stations, as grass mowing and weed spray as part of station landscaping will be performed by others. Contractor shall take all necessary steps to protect any environmentally sensitive areas.

- 10.31.3. The Contractor shall at each side of every at-grade crossing, control the grass and brush growing from right-of-way to right-of-way adjacent to the at-grade crossing to a point 500 feet from the edge of the at-grade crossing.
- 10.31.4. The Contractor shall maintain vegetation under CMTA bridges and within 25' of either side of a bridge, to a height of not more than 30". The Contractor shall remove drift and trees under and around bridges and culverts.
- 10.31.5. The Contractor shall comply with all federal, state and local laws, ordinances and regulations relating to brush and weed control. Contractor shall be responsible for any fines or penalties levied for failure to comply.
- 10.31.6. The Contractor shall control vegetation in the right-of-way. Vegetation control may include pre-emergent chemical soils treatment and follow-up spot contact spray and mowing to aid in controlling germination and emergent vegetation. Chemical treatment shall be used with full environmental impact awareness and in accordance with the manufacturer's instructions. The Contractor shall include chemical soil treatment to prevent germination and to kill emergent vegetation. Application of chemical shall be scheduled by the Contractor in order to achieve the results specified herein. Application of chemical agents shall be in conformance with all applicable laws and regulations. The Contractor is specifically liable for damage claims attributed to chemical application, and any such claims received by CMTA will be referred to the Contractor. The Contractor shall obtain all permits for chemical application.
- 10.31.7. Vegetation control includes all follow-up mechanical or manual removal of brush and grass which is not controlled by chemical application.
- 10.31.8. Mechanical or manual removal of vegetation may be required to correct all growth which causes violations of local fire codes and FRA Standards and/or growth which intrudes into the walkway or track structure from adjacent property, impairs visibility, or impairs drainage channels. Mechanical or manual removal of vegetation includes its removal from CMTA railroad property. The Contractor shall remove brush as required. Brush will be cut and chipped or removed from the property.
- 10.31.9. The ~~contractor~~Contractor shall provide a schedule for grass mowing and brush control along right-of-way with the understanding that the areas between MLK and the Downtown Station may need to be addressed more frequently than other areas along the Central Subdivision.
- 10.31.10. The Contractor shall respond to "as needed" requests for vegetation control by CMTA.
- 10.31.11. The Contractor shall trim all trees and underbrush to assure that no vegetation or other growth or downed trees are within the railroad property line or adjacent to highway at-grade crossings as defined herein.
- 10.31.12. The ~~contractor~~Contractor shall notify the VP Rail Operations or designee of any vegetation rooted on private property adjacent to the central subdivision which does or can affect railroad operations. This includes dead or dying trees which could fall on the tracks

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and affect train movement and trees whose canopy affects signal sighting by the commuter, excursion or freight train engineer.

10.31.13. With the exception of areas adjacent to grade crossings and as required by the CMTA or applicable regulations, no other tree removal work shall be performed without prior approval of the Capitol Metro.

10.31.14. Keep brush cut back to the existing width of the Right of Way from property line to property line. The Contractor shall promptly chip and remove all brush from the Right of Way. Vegetation identified by CMTA as a nuisance or safety hazard shall be removed by the Contractor with due diligence, and in any event, not later than 15 days after notification by CMTA.

10.31.15. The Contractor shall keep all approaches to grade crossings clear so that approaches to the crossing shall be visible from the train in accordance with 49 CFR 213.37 and CMTA standards.

~~6.2.5.10.31.16.~~ 250 feet each way from where the intersection of the centerline of the highway grade crossing and the centerline of the CMTA railroad right-of-way to each one of the CMTA railroad property lines so that the crossing approaches are visible from both the trains and highway traffic. If the railroad property is fenced, the ~~contractor~~ Contractor shall control the vegetation to within two feet of the fence

~~6.2.6.10.31.17.~~ The Contractor shall keep approaches to all wayside signals free of vegetation in order to ensure a continuous clear line of sight for approaching trains.

~~6.2.7.10.31.18.~~ The Contractor shall apply State-approved herbicides to prevent weed growth from all track beds and other approved areas, to the extent that regulations allow.

10.31.19. The Contractor shall cut and trim the grass so that the grass should not exceed one foot in height

~~6.3.10.32.~~ Failure to maintain vegetation according to standards will result in a PDC per occurrence each day after defined timeline has expired as stated in **Exhibit H**.

~~6.4.10.33.~~ The Contractor shall assist CMTA, with maintenance of way services related to the Central Subdivision licenses and easements, including plan preparation.

~~6.5.10.34.~~ CMTA shall issue all licenses and easements to Third Parties, as deemed appropriate by CMTA. The Contractor shall not have the authority to issue licenses and easements to Third Parties.

10.35. **Equipment Calibration**

~~6.5.1.10.35.1.~~ The Contractor shall identify all tools and test equipment that requires calibration (CDRL ~~10.35.140.36.1~~), the frequency of calibration and the calibration standards and procedures. Contractor shall provide this list of tool and standards to CMTA **annually by January 15th**.

~~6.5.2.10.35.2.~~ The Contractor shall be required to maintain a system for tracking the calibration status (electronic and hard copy reporting) of the equipment and to be able to recall items for

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recalibration based on a published schedule, as well as items discovered to have been processed with "out of calibration" equipment.

~~6.5.3.10.35.3.~~ The required system shall also provide for clear identification of calibration status and due dates on the calibrated items, retention of current calibration certificates, and storage of calibrated items under conditions that ensure their continued accuracy.

~~6.5.4.10.35.4.~~ The Contractor shall submit a calibration management procedure (CDRL ~~10.368.4~~) for CMTA review and approval within 60 days after NTP.

10.36. Additional work

~~6.5.5.10.36.1.~~ Any additional work pertaining to this section will be modified in accordance to Exhibit A-2.

~~8.11.~~ SIGNALS AND COMMUNICATIONS MAINTENANCE SERVICES

~~8.1.11.1.~~ The Contractor shall develop and submit a Maintenance of ~~Wayside~~ Signal System Plan (CDRL 11.1) to CMTA for review and approval within ~~sixty~~ (60) days after NTP to the ~~Capital Metro~~CMTA Vice President Rail Operations or designee. The ~~Capital Metro~~CMTA Vice President of Rail Operations will review the Maintenance of ~~Wayside~~ Signal System Plan and either approve it or, within 30 days, direct the Contractor to revise it. Thereafter the Contractor shall submit a preliminary draft of the proposed Maintenance of ~~Wayside~~ Signal System Plan on or before October 1st of each year and final draft on or before January 1st of each year after approval through the Configuration Management process.

~~8.2.11.2.~~ The Contractor shall perform inspections, maintenance and test all wayside, interlocking, control point, highway-rail grade crossing warning system, communications, defect detectors and DMS signs located within limits of the Service Property in accordance with all applicable regulations, and recommended practices established by federal, state and local bodies including but not limited to FRA, APTA, AREMA, MUTCD, TXMUTCD, Original Equipment Manufacturer (OEM), suppliers and sub suppliers as part of the ~~wayside~~ signal and communications maintenance services.

~~8.3.11.3.~~ The Contractor is responsible to secure and maintain appropriate levels of signal equipment inventory for wayside signals, bungalows, high-wide detectors, signal equipment, signal power locations, track circuits, signal houses and cases, control cables and wiring, switch machines, grade crossing protection equipment (including gates, flashers, bells, signage, equipment, etc.), electric locks, and derails, hot box detectors, paging equipment detectors, and other related signal and communication equipment, to ensure a safe and reliable service.

~~8.4.11.4.~~ The Contractor shall maintain the signals and communications systems in such a manner as to minimize interference with or delay to trains and motorists.

~~8.5.11.5.~~ The Contractor shall not make any modifications to the signal systems or the communication systems until the proposed changes are reviewed and approved by the CMTY Configuration Management Committee. The Contractor shall prepare and defend all necessary documents required for modifications. When such authorization is given, it shall be the responsibility of the CMTA to file all necessary applications to the FRA or the State for changes, additions, modifications, or new installations. This application shall be reviewed by CMTY

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Configuration Management Committee and following approval, it shall be cosigned with the CMTA and the Contractor.

~~8.6.11.6.~~ Material for maintenance shall meet and/or exceed AREMA recommended practices. Any deviation from these standards shall be approved by ~~Capital Metro~~CMTA in advance through the CMTY Configuration Management Committee.

~~8.7.11.7.~~ Emergency repairs that require temporary modifications may be performed in the interest of safety. Verbal notification of such modification shall be made within four (4) hours of initiation of such modification. Request for permanent modifications shall follow in writing within twenty-four (24) hours of such initiation. Request shall include a detailed explanation of the required modifications and the reason it was initiated.

~~8.8.11.8.~~ The Contractor shall use on-site personnel to support any communications and signal construction work performed by other contractors as a part of the ~~Capital Metro~~CMTA construction and third-party projects at no additional cost to ~~Capital Metro~~CMTA. The Contractor's support shall include, but is not limited to, providing access to all Communications and Signal facilities and identifying, assisting with, and performing the testing of such facilities, certifying that the installation or modification and authorized for revenue service. If the magnitude, duration and scope of the support requires additional resources outside of the personnel assigned to the CMTA contract, the Contractor shall notify CMTA of the need for external support and the cost of such support. The Contractor shall clearly document why this support cannot be fulfilled with on-site personnel. Acceptance of additional costs is at the sole discretion of CMTA.

11.9. The Contractor shall locate all underground signal and communication cables that exist at or near the area of other contractors performing work on or near the ~~Capital Metro~~CMTA Service Property. The Contractor shall perform such services in advance of other contractors' work, and

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the Contractor shall clearly identify the location of all facilities by markings on the ground, at no additional cost.

11.10. The Contractor shall provide the following plans and procedures which are specific to ~~Capital Metro~~CMTA's signal system 90 days after notice to proceed:

11.10.1. Signal System Maintenance Plan (CDRL 11.10.1)

11.10.2. Signal System Maintenance Procedures (CDRL 11.4410.2)

11.10.3. Signal System Inspection and Test Plan (CDRL 11.10.3)

11.10.4. Signal System Inspection and Test Procedures (CDRL 11.10.4)

11.10.5. Signal System Inspection and Test Data Sheets (CDRL 11.10.5)

11.10.6. Signal System Failure Reduction Plan (CDRL 11.10.6)

11.10.7. Communications Systems Maintenance Plan (CDRL 11.10.7)

11.10.8. Communications System Maintenance Procedures (CDRL 11.10.8)

11.10.9. Communications System Inspection and Test Plan (CDRL 11.10.9)

11.10.10. Communications System Inspection and Test Procedures (CDRL 11.10.10)

11.10.11. Communications System Inspection and Test Data Sheets (CDRL 11.10.11)

11.10.12. Communications System Failure Reduction Plan (CDRL 11.10.12)

11.11. All Test data shall also be incorporated into the AMS

11.12. **Post Accident – Inspections and Tests.**

11.12.1. Inspections and tests for proper operations after a reported accident must be recorded by the Contractor.

11.12.2. The Contractor shall test the crossings without altering any aspects of the crossing.

11.12.3. The crossing sheet and post-accident forms shall be forwarded to the appropriate agency and ~~Capital Metro~~CMTA personnel, showing accident inspection and any exceptions.

11.12.4. The Contractor shall jointly review with ~~Capital Metro~~CMTA, the Post Accident – Inspections and Tests on an annual basis to ensure that equipment configuration or other items have not been altered.

11.13. Filing of Inspection Forms. The Contractor shall file all necessary forms in a timely manner so as to comply with all FRA, rules standards and instructions.

11.14. The Contractor shall develop the necessary forms (CDRL 11.14) for use by signal maintainers and submit to CMTA for review and approval. The Contractor shall retain copies of

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all forms and test results as a record of completion and compliance. The test forms shall allow for the recording of actual test instrument readings.

11.15. The Contractor shall inspect and verify that any modifications or changes to any part of the ~~Capital Metro~~CMTA signal system by the Contractor, ~~Capital Metro~~CMTA contractors, or other contractors have been performed in accordance with approved test procedures. The test procedures shall be established by the Contractor in accordance with AREMA, FRA and industry regulations.

11.16. The Contractor shall submit, prior to beginning any work, plans showing proposed changes to the ~~Capital Metro~~CMTA signal and communications systems for review as well as a complete schedule of work and testing. The test procedures shall be submitted indicating the proposed testing to be performed each time the signal system is returned to operation prior to movement of any trains.

11.17. Signal System Plans

11.17.1. The Contractor shall maintain ~~Capital Metro~~CMTA's Signal Plans. The Contractor shall ensure proper revision levels are in order for the signal plans.

11.17.2. ~~The~~Annually, the Contractor shall review signal drawings and ensure signal drawings located in the field match all signal drawings in the repository and shall notify ~~Capital Metro~~CMTA of any discrepancies.

11.17.3. All electronic equipment requiring field programming in electronic format shall be documented for each device by location. This includes completely documented software and firmware. This information shall be retained for all vital logic control equipment, coded track equipment, data recorders, communication equipment and any other device with electronic storage of user entered programming.

11.17.4. The Contractor shall revise and backup electronic CAD files of the signals and communication systems, and capturing field changes in the As-~~Build~~Built drawings every six (6) months and store as required by the CMTY Software Management Plan. All submittals shall be maintained and provided at CMTA request in native CAD format. If required based on design changes, drawings and submittals will need to be signed and stamped by a Texas Professional Engineer in accordance with the Texas Engineering Practice Act.

11.18. Highway-Rail Grade Crossings

11.18.1. The Contractor shall ensure that the ~~line-of-sight~~line-of-sight conditions at crossings is not -obstructed by brush, weeds, or trees on the right-of-way in order to provide a clear view of approaching trains or motorists.

11.18.2. The Contractor shall ensure that broken crossing gates are repaired as soon as possible upon notification.

11.18.3. The Contractor shall maintain automatic grade crossing warning signals to be activated by trains approaching on main tracks and applicable industry and/or siding tracks in accordance with TXMUTCD, AREMA, FRA, State, and ~~Capital Metro~~CMTA standards which accommodate the existing maximum authorized train speeds and provide crossing

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approach distances of sufficient length to accommodate the maximum authorized track speeds.

11.18.4. The Contractor shall maintain the air conditioning and or heating units located in the signal and communications enclosures.

11.19. Communication Systems

11.19.1. The Contractor shall maintain the communication systems and equipment including but not limited to telecommunication systems, ~~fiber optic systems~~, and other methods of data communications will be maintained to a reliable level of service in compliance with State or Federal Communications Commission (FCC) regulations by the Contractor.

11.19.2. The Contractor shall maintain all communication systems (public communication, microwave, two-way radio, dispatch center, base stations, towers, repeaters, telephone, etc.) to a safe and reliable level. The Contractor shall maintain all systems in kind, in accordance with maintenance standards or as required by applicable jurisdictional authorities, unless modifications are authorized by CMTA.

11.19.3. The Contractor shall maintain and coordinate the support and resolution of system failures between ~~Capital Metro~~CMTA IT, ~~RailComm~~the dispatch control center vendor and

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cellular/[data](#) provider for the CMTA field communication systems/network including but not limited to following:

~~8.8.1.2-11.19.3.1.~~ All levels of support of [RailCommDispatch Control Center](#) Communications from the field to the office.

~~8.8.1.3-11.19.3.2.~~ Data radio

~~8.8.1.4-11.19.3.3.~~ Base radio

~~8.8.1.5-11.19.3.4.~~ Repeater radio

~~8.8.1.6-11.19.3.5.~~ Remote radio

~~8.8.1.7-11.19.3.6.~~ Cellular

~~8.8.1.8-11.19.3.7.~~ RailComm I2 Controller

~~8.8.1.9-11.19.3.8.~~ Lightning suppression for the field communication systems / network including station communication enclosures.

~~8.8.1.10-11.19.3.9.~~ Battery backup for station communication enclosures.

~~8.8.1.11-11.19.3.10.~~ Secondary communication from station communication enclosures.

~~8.8.1.12-11.19.3.11.~~ Crossing indications – ~~Capital Metro~~[CMTA](#) Code Chart

~~8.8.1.13-11.19.3.12.~~ Battery Low

~~8.8.1.14-11.19.3.13.~~ Smoke and Fire (Future Use)

~~8.8.1.15-11.19.3.14.~~ Door Entry / Alarm - Gate Down

~~8.8.1.16-11.19.3.15.~~ Power Off

~~8.8.1.17-11.19.3.16.~~ Gate Malfunction

~~8.8.1.18-11.19.3.17.~~ Crossing Activation

~~8.8.1.19-11.19.3.18.~~ Loop Detector Failure (quad's only)

~~8.8.1.20-11.19.3.19.~~ Spare / Defect Detector (Wide Load Detection, Flood Detection, [etcetc...](#))

~~8.8.1.21-11.19.3.20.~~ Crossing Dual-tone multi-frequency (DTMF) radio communications.

11.19.4. Remote monitoring from field to office systems. The Contractor shall provide monthly inspections of all field communication systems (CDRL 11.19.4).

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- 11.20. The communication maintenance shall include researching, troubleshooting and repairing the communication system issues. The Contractor shall provide all labor, material, equipment, and facilities to conduct a comprehensive assessment of the cause(s) / reason(s) for the failure of the communication system to work as originally designed. The Contractor shall identify communication system deficiencies, provide recommendations for remedy, which may include perform remedial work, testing, and acceptance certification as necessary to repair the system.
- 11.21. The Contractor shall not install, modify, or discontinue signal and communication systems without prior written approval from Vice President of Rail Operations or designee. When such approval is granted, it shall be the responsibility of the ~~contractor~~Contractor to prepare all necessary documents for CMTA's approval filing all necessary applications and/or document(s) for authorization to the FRA, Federal Communications Commission (FCC), TxDOT and any other governing entities for new installations, modifications, removals, or discontinuation of any part of the system. The Contractor is responsible for archiving all documents ~~and~~and made immediately available upon verbal or written request by CMTA.
- 11.22. The Contractor shall inspect, maintain and test all highway-rail grade crossings in order to maintain the Service Property. Crossings, including automatic highway crossing warning systems shall be maintained by the ~~contractor~~Contractor in a manner that is safe, and compliant with all applicable uses, rules and regulations including FRA, TxDOT, DOT, TXMUTCD, MUTCD and OEM.
- 11.23. The Contractor shall ensure that all components of a highway-rail grade crossing warning system are in place and functioning as designed. The ~~contractor~~Contractor shall consult with OEMs as necessary to remedy noted deficiencies.
- 11.24. The Contractor shall perform emergency modification(s) in the interest of safety. Verbal notification of such modifications will be accepted if received by CMTA prior to the initiation of such modifications. The Contractor shall provide a written request for final modification(s) approval within twenty-four (24) hours of such initiation, and shall include a detailed explanation of the required modification(s) and the reason emergency modification was initiated.
- 11.25. The Contractor shall submit permanent modification(s) made to the signal or communication systems in AMS and submit to the Vice President of Rail Operations or designee no later than 30 days prior to the modification(s) is placed in service. Additionally, the ~~contractor~~Contractor shall obtain all applicable warranty agreements in the name of CMTA and provide any and all associated documentation to CMTA. The Contractor shall administer such warranties.
- 11.26. The Contractor shall coordinate with regulatory authorities, with regard to any failures of devices or other matters that result in public complaints or involve the safety of the general public.

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It shall be the responsibility of the Contractor to take whatever measures are necessary to mitigate any such circumstances as described above.

11.27. The ~~contractor~~Contractor shall follow applicable FRA regulations regarding investigation and reporting of false proceeds. The ~~contractor~~Contractor shall also submit the following reports to CMTA after every false proceed:

11.27.1. A preliminary report, within 24 hours of the reported false proceed, in electronic secured format.

11.27.2. A final report, within 15 days of the false proceed, filed on form FRA 6180-14, in electronic format (**Exhibit J-Attachment 26**).

11.28. The ~~contractor~~Contractor shall provide an annual signal system failure reduction program (CDRL 11.28) for CMTA's approval as part of the annual signal and communications service plan. The goal of the program shall be to produce an annual five percent reduction from the previous contract year's totals on all signal failures. A preliminary plan shall be submitted to CMTA no later than 120 days after NTP

11.28.1. The Contractor shall submit signal and train control tests and inspection reports according to 49 CFR Parts 234 and 236 to CMTA monthly. The written monthly report of the tests or inspections shall be submitted in electronically secured format. The ~~contractor~~Contractor shall retain the official documentation of tests and inspections.

11.28.2. The Contactor's report shall be dated, signed and include a statement affirming all required tests and inspections have been completed in accordance with CMTY and FRA requirements.

11.28.3. The Contractor's test, inspection dates and results shall be recorded in the asset management system and summarized in the monthly report on FRA test compliance.

11.29. **Wayside Signals and Interlockings**

11.29.1. The Contractor shall update color lamp change out records showing last date changed and shall be kept at each location. In addition, the change out and due replacement dates for each color lamp with an appropriate apparatus identification number and lamp voltage at the time of installation shall be recorded in AMS.

11.30. **Additional work**

11.30.1. Any additional work pertaining to this section will be modified in accordance to **Exhibit A-2**.

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12. RAIL VEHICLE MAINTENANCE SERVICES

12.1. Preventive Maintenance and Inspection Services

- 12.1.1. The Contractor shall be responsible for all maintenance, and shall maintain records for same. Maintenance will be performed to original equipment manufacturer (OEM) and FRA standards and/or CMTA's written instructions or specifications. OEM or better replacement parts will be used.
- 12.1.2. The Contractor is responsible for all OEM preventive and unscheduled maintenance and the labor and associated materials used in this maintenance, including major repair, overhauls, running repairs, body work of any type, electronics systems, servicing, corrective repairs, daily and detailed cleaning as stated by OEM necessary to keep CMTA-furnished vehicles in a safe, reliable and well-maintained condition, assuring that all on-board systems are fully functional and operational.
- 12.1.3. The Contractor shall develop and implement a Comprehensive Preventive Maintenance, Inspection and Cleaning Program (CDRL 12.1.3) which address FRA inspection requirements, CMTA, and OEM inspection, maintenance and cleaning standards, no later than 120 days NTP. Included in the Preventive Maintenance Inspection and Cleaning Program will be all related inspection forms. This program shall be approved by CMTA and appropriately designed and maintained for CMTA fleet.
- 12.1.4. The Contractor shall inspect and maintain the fleet to the applicable FRA, CMTA and OEM standards. ~~In some cases, however, CMTA standards shall supersede the FRA minimum requirements.~~ If any standards are in conflict, the ~~contractor~~Contractor will apply the most restrictive standard.

System	Description
01	Propulsion
02	System Controls
03	Preventative, Friction, Track Brakes
04	Auxiliary Power Supply
05	Car Body Exterior and Interior (for DMUs inclusive of Fuel Storage Tank and Ecology Tank)
07	Door System
08	Truck and Suspension / Coupler and Draft Gear
09	HVAC System
10	Communications
11	Diesel Engine, Air Intake and Exhaust and Cooling System
13	Event Recorder
14	Diagnostics
15	Positive Train Control (when implemented)

- 12.1.5. All systems and subsystems shall be maintained to an operable level as defined by the OEM. In the absence of such guidance, the Contractor shall notify CMTA and apply the appropriate CMTA standards.
- 12.1.6. No modifications to the PM Program are to be made without written approval from CMTA.
- 12.1.7. Scheduled maintenance for diesel engines: The periodic maintenance tasks for engines are scheduled in the Asset Management System on a -calendar basis. The tasks include engine replacement (rebuild), engine tune up, engine turbo replacement.
- 12.1.8. The Contractor shall maintain the wheel sets, in "like new" condition less allowable wear. Replacement wheels are to be OEM quality or a grade better -and must be Wheels that do

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~~not meet the above criteria will be cause for the vehicle to be removed from service. CMTA is responsible for the costs associated with the wheel replacement program. Contractor shall will develop a proposed budget for the wheel replacement program containing the elements detailed in Modification 1 to this agreement for CMTA review and approval. The CMTA approved wheel replacement program costs will be reimbursed at actual cost, provided by Contractor. Wheels that do not meet the above criteria will be cause for the vehicle to be removed from service.~~

12.1.9. In addition to meeting regulatory and OEM requirement, vehicles placed in service by Contractor must:

~~8.8.1.22.~~12.1.9.1. Have fully operational engines, air conditioning, lighting, radios, PA and Passenger Emergency Communications (PEC) systems. and destination signs.

~~8.8.1.23.~~12.1.9.2. Be free of body damage, have no missing or unpainted panels; with wheels checked nightly for any defects, crack or flat spots.

~~8.8.1.24.~~12.1.9.3. Be free of graffiti on the exterior and interior of vehicle, and free of any etched window glass.

~~8.8.1.25.~~12.1.9.4. Have all safety items fully operational; i.e., lights, brakes, horn, wheels, etc.

~~8.8.1.26.~~12.1.9.5. Maintain a clean appearance in the exterior and interior of the vehicle while it is in service.

12.1.10. The Contractor shall not cannibalize any rail vehicle for parts at any time.

12.1.11. All vehicles shall be maintained properly. Contractor shall not put into peril any warranties that may exist on a particular vehicle from the OEM. In the event that warranty is lost due to negligence or lack of maintenance, Contractor will be required to purchase the remainder of the warranty from the OEM in order to cover the time that was lost due to negligence.

12.2. **Daily Servicing Program**

12.2.1. The Contractor shall complete the daily MI no less than two (2) hours prior to the scheduled departure from the initial terminal.

12.3. **Cleaning Standards**

12.3.1. The Contractor shall provide a Rail Vehicle Fleet Cleaning Plan list (CDRL 12.3.1) of proposed cleaning chemicals with MSDS sheets and processes shall be submitted to CMTA for its review -5 days NTP.

12.3.2. The Contractor shall provide a Rail Vehicle Cleaning Plan (CDRL 12.3.2) consisting of a daily and monthly schedule for CMTA to review and approve no later than 60 days NTP.

12.3.3. The Contractor shall perform a walk-through of each train between the morning and afternoon Peak Commuter Periods to remove debris and trash from the train.

12.3.4. The Contractor shall address minor graffiti as part -of the rail vehicle cleaning plan. If there is a significant graffiti incident, and the graffiti is not deemed offensive (if there is a question as to what is offensive, the Contractor shall ask CMTA for a determination), the Contractor

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shall keep the equipment in revenue service until its next regularly scheduled time for service and inspection and address the train at that time (such time not to exceed 24 hours from notice or discovery of the graffiti).

12.3.5. As used in the Cleaning Standards, "wipedown" shall be defined as cleaning a surface using a damp cloth with cleaning solution not leaving a film, residue or streak when completed.

12.3.6. The Contractor inspections will be conducted to ensure that the vehicles are cleaned in accordance with instructions. A PDC as specified in **Exhibit H** will be assessed for each incident in which Contractor fails to clean vehicle as required above.

12.4. Maintenance Interval (MI) Forms

12.4.1. The Contractor shall prepare and present to CMTA for review and approval within 90 days after NTP, maintenance interval forms (CDRL 12.4.1) that are designed to record the work performed at each maintenance interval.

12.4.2. The forms shall, at a minimum, include the following:

~~8.8.1.27~~.12.4.2.1. Name of the agency (CMTA) and the Contractor,

~~8.8.1.28~~.12.4.2.2. Date and Time,

~~8.8.1.29~~.12.4.2.3. Vehicle Number(s),

~~8.8.1.30~~.12.4.2.4. MI Type (i.e. Daily MI, 92-day MI, etc.),

~~8.8.1.31~~.12.4.2.5. Maintenance Location,

~~8.8.1.32~~.12.4.2.6. FRA Inspections

~~8.8.1.33~~.12.4.2.7. Reference each inspection individually with a reference to the specific regulation.

~~8.8.1.34~~.12.4.2.8. Include a signature block next to each inspection to certify that the inspection was properly performed.

~~8.8.1.35~~.12.4.2.9. List all MI tasks in a logical sequence (i.e., by vehicle type, by location and/or by craft performing the work).

~~8.8.1.36~~.12.4.2.10. Include a signature block for the appropriate responsible person'(s) signature and employee identification number(s) to certify that the work was properly performed.

12.4.3. The forms shall include a signature block for the supervisor's signature and employee identification number to certify that the work was properly performed.

12.4.4. Any defects found and repaired during the inspection shall be documented on the form.

12.4.5. The forms shall have multiple copies to facilitate the following:

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~~8.8.1.37.12.4.5.1.~~ One ~~form~~ required by FRA regulation, one form stays in a holder on the lead cab of the train.

~~8.8.1.38.12.4.5.2.~~ One form is filed at the maintenance facility.

~~8.8.1.39.12.4.5.3.~~ The forms shall be recorded electronically in the Maintenance Management System.

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12.5. Out of service criteria

12.5.1. The following are examples of conditions that could cause a vehicle to be taken out of service. CMTA reserves the right to remove any vehicle from service.

12.5.2. Oil leak

12.5.3. Fuel leak

12.5.4. Coolant leak

12.5.5. Audible air leak

12.5.6. Brakes inoperative

12.5.7. Excessive exhaust smoke

12.5.8. Inoperative horn

12.5.9. Inoperative headlight

12.5.10. HVAC not capable of attaining interior temperature to 72 degrees cooling, or 68 degrees heating or +/-25 degree differential

12.5.11. Inoperative door interlock systems

12.5.12. Operator's seat unable to maintain position (height or slide)

12.5.13. Cracked windshield - glazing in the operator's field of vision

12.5.14. Cracked passenger window -glazing

12.5.15. Inoperative event recorder

12.5.16. Engine lack of power Engine no start

12.5.17. Engine shuts down

12.5.18. Defroster inoperative

12.5.19. Doors inoperative

12.5.20. Major body damage

12.5.21. Inoperable windshield wipers

12.5.22. Loose and unusable mirrors

12.5.23. FRA defect

~~8.9.12.6.~~ The Contractor shall ensure that all vehicles in revenue service do not have any out-of-service criteria items. Should an out of service criteria item occur while the vehicle is in revenue service, Contractor shall arrange for a replacement of the failed vehicle within no more than two hours from the time the failure was reported. Contractor shall ensure that malfunctioning vehicles are removed from service and returned to service in a reasonable time period. Contractor will be

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assessed PDC as specified in **Exhibit H** for each hour after the first two hours for any vehicle that has mechanically failed and not been returned to the shop. If the vehicle must be towed, the assessment will occur after a day.

12.6.1. No vehicle shall be placed into revenue service with out of service criteria unless approved by CMTA.

12.7. General Requirements

12.7.1. The Contractor shall conduct all FRA required inspections and maintenance tasks include, but are not limited to, the following:

~~8.9.1.1.~~ 12.7.1.1. Exterior Calendar Day Mechanical Inspection;

~~8.9.1.2.~~ 12.7.1.2. Interior Calendar Day Mechanical Inspection;

~~8.9.1.3.~~ 12.7.1.3. Periodic Mechanical Inspections

~~8.9.1.4.~~ 12.7.1.4. Periodic Brake Equipment Maintenance;

~~8.9.1.5.~~ 12.7.1.5. Brake Tests, as applicable;

~~8.9.1.6.~~ 12.7.1.6. Testing Emergency Lighting, Manual Door Releases Passenger Emergency Intercoms and Public Address Systems; and

~~8.9.1.7.~~ 12.7.1.7. CMTA DMU Inspection and other CMTA inspections shall be documented in the CMTA asset management system and reported to CMTA monthly or upon request. -with sample maintenance inspection forms to be provided by CMTA upon request (and subject to change by CMTA).

12.8. All Rail vehicle maintenance services provided by the Contractor shall comply in all respects with all applicable laws, regulations, standards, and recommended practices including but not limited to the following agencies, organizations, manufacturers, regulatory bodies and regulations: DOT, FRA, FTA, EPA, APTA, TxDOT, OEM, OSHA, AREMA, and ADA.

12.9. Where there is a conflict, the most restrictive requirement shall apply.

12.10. During the Contract period, CMTA ~~shall have,~~ shall have at its sole discretion, the authority to remove from service or assign to tripper service, any vehicle that poses a safety, reliability, or customer comfort concern. Such action does not relieve Contractor's obligation to provide service under the terms of the contract.

12.11. Contractor shall maintain computerized maintenance records for any maintenance activities requiring more than ten (10) minutes in the CMTA asset management system. Defects identified are to be addressed prior to the vehicle being returned to revenue service. Vehicle daily inspection cards are to be kept on file by vehicle number for a 92 - day period.

12.12. CMTA will conduct regular in- service audits and inspections of vehicles. The type of inspections and audits that CMTA may perform are: PM follow-up inspections, in-service inspections, cleanliness inspections, and random fleet audit inspections during the contract. Contractor is required to make vehicles available for such inspections on the inspection pits upon request. Sample audit inspection forms are provided in **Exhibit J Attachment 22-** Inspection

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Report Form, **Attachment 23** - Vehicle Cleanliness Inspection, **Attachment 25**-Corrective Action Request Form.

12.13. CMTA may schedule routine vehicle inspections with Contractor. CMTA and Contractor will complete all vehicle inspections jointly after contract award and after the arrival of the new vehicles. CMTA shall coordinate such inspections with Contractor's designated representative. If defective items are found that are not sufficient to cause the vehicle to be out of service, then the vehicle can be used in revenue service,

12.14. All deficiencies will be corrected within thirty (30) days of the joint inspection.

12.15. For any item that is found defective and causes the vehicle to be placed out of service, the ~~contractor~~Contractor must notify the Vice President of Rail Operations or designee when repairs are complete and request a re-inspection.

12.16. Maintenance Operations – General

12.16.1. In some instances, this Contract sets forth maintenance standards and condemning limits for components that are more stringent than FRA requirements. In the event of any conflict, the most restrictive standards shall apply.

12.16.2. During the course of the contract CMTA ~~will~~may acquire ~~four~~additional Stadler GTW 2/6 vehicles. Once the vehicles are accepted by ~~Capital Metro~~CMTA, ~~the Contractor will~~the Contractor shall assume all maintenance responsibilities for the vehicles at mutually agreed upon maintenance schedule consistent with the routine maintenance and overhaul requirements of the vehicle at the time of acceptance by CMTA. These vehicles shall be maintained at a level and price consistent with the most similar model (generation) of the vehicle already in the CMTA fleet of Stadler GTW 2/6 vehicles.

12.16.3. All DMU overhaul work and COT&S maintenance activities shall be performed concurrently to the extent possible in order to maximize fleet availability at all times.

12.16.4. COT&S activities should be staged evenly throughout the calendar year(s) to stagger the FRA due dates and maximize fleet availability at all times.

12.17. Fleet Availability Requirements

12.17.1. Equipment "available for revenue service," as used herein, shall mean equipment from the revenue service that has the following attributes:

~~8.9.1.8.~~12.17.1.1. Daily MI (as hereinafter defined) has been performed;

~~8.9.1.9.~~12.17.1.2. Passed all required daily tests and inspections;

~~8.9.1.10.~~12.17.1.3. Compliant with CMTA, OEM and FRA inspection criteria;

~~8.9.1.11.~~12.17.1.4. Equipped with all required amenities; and

~~8.9.1.12.~~12.17.1.5. Posted as being available for revenue service.

12.18. Rail Maintenance Facility

12.18.1. The maintenance facility is located at the CMTA North Operations Facility (NorthOps) at 9315 McNeil Road, Austin, Texas. The facility has two (2) tracks for service,

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inspection, periodic maintenance and cleaning. A fueling station is also located at NorthOps. This ~~two-track~~two-track structure can accommodate two DMUs inside and a third under cover outside with two storage tracks.

12.18.2. ~~12.18.2~~—The ~~contractor~~Contractor shall conduct monthly facility inspections. Facility inspections shall include the fueling station and the above ground fuel tank.

12.18.3. ~~12.18.3~~—The ~~contractor~~Contractor is responsible for the maintenance and repairs of the above ground storage tank and fueling station.

12.19. Material Supply and Management

12.19.1. CMTA's objective is for the Contractor to have a sufficient supply of spare DMU parts available to maintain the system to the required standards and levels of maintenance and repairs.

12.19.2. CMTA will provide an initial spare parts inventory (**Exhibit J – Attachment 20**) thereafter, the Contractor is responsible for purchasing spare parts and ensuring there is sufficient quantity of spare parts on hand to meet fleet availability requirements. CMTA reserves the right to purchase back spare DMU parts, if desired, at the purchase price entered into the asset management system at the end of the contract term. If CMTA does not purchase the remaining inventory, the Contractor shall make the remaining inventory available at the original purchase price to the next contractor.

12.19.3. The Contractor shall maintain the value of CMTA inventories of materials, consumables, and spares.

12.19.4. The Contractor is responsible for procuring a spare parts inventory for additional vehicles added, during the contract period, in advance of the vehicles arrival sufficient to maintain the equipment according to OEM requirements.

12.19.5. Twelve months prior to the end of the contract period, CMTA and ~~the Contractor~~ ~~with the Contractor~~ shall jointly review the initial spare parts inventory (**Exhibit J – Attachment 20**) and determine what changes need to be made based on additional vehicles and part obsolescence, what future quantities are necessary, and what quantities should be made available at the end of the contract to either CMTA or the next contractor.

12.20. Miscellaneous

12.20.1. The Contractor shall complete major repair work no later than thirty (30) calendar days from the date the defect was noted unless approved by CMTAan extension is granted or an otherwise CMTA approved repair deadline is established.

12.20.2. The Contractor shall maintain the vehicle so that no repair requires the vehicle to be out of service for an extended period of time. A more than thirty (30) days. Unless an extension is granted or an otherwise CMTA approved repair deadline is established, a PDC will be assessed for each day on which Contractor fails to return a vehicle to service after exceeding thirty (30) days out of service.

12.20.3. Repair work deadlines contained in Section 12.20.1 and Section 12.20.2 for repairs resulting from events identified in Section 10.18.2 can be extended when requested by the

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Contractor and approved by the Vice President of Rail Operations or his designee. Extensions will not exceed thirty (30) days.

- 12.20.4. The Contractor shall warrant all components and parts installed by Contractor's maintenance department or contracted repairs with the same warranty as is provided by manufacturers or certified re-builders.
- 12.20.5. Failure by the Contractor to maintain CMTA furnished vehicles as defined by the OEM, AAR, FRA and CMTA written instructions may result in the vehicles being repaired by a CMTA-selected third party at Contractor's expense. Such action does not relieve Contractor's obligation to provide service under the terms of the contract.
- 12.20.6. All repairs required from the PM Inspection are to be completed prior to the vehicle being returned to revenue service. Any exceptions must be approved in advance by CMTA.
- 12.20.7. Preventive Maintenance (PM) Inspections are required for revenue vehicles and PM inspections that are performed ~~+/more than~~ 4 days ~~of past~~ the due date will be assessed a PDC per day per inspection as specified in **Exhibit H**.
- 12.20.8. The Contractor shall forward any engine analysis to the VP of Rail Operations or designee.
- 12.20.9. Any exception to timeline must be approved by ~~Capital Metro~~CMTA Vice President of Rail Operations or designee in writing.
- 12.20.10. ~~The Contractor is responsible for repairing all damage to equipment resulting from acts of God, weather, vandalism, incidents, accidents, trespassers, debris strikes etc.~~

~~8.10.1. CMTA will reimburse the contractor for any work that exceeds \$25,000 per incident in accordance with Exhibit E 6 of this contract. The contractor is financially responsible for an amount not to exceed \$25,000 per incident. The contractor will be responsible at its cost to repair any damage to the rail track, the DMU vehicles, and ancillary equipment (e.g. signal houses, crossing gates, signage) up to the amount of \$25,000 per incident caused by the following events: vandalism, trespassers, debris strikes, washouts, floods, wind events, tornadoes, hurricanes, birds strikes, animals, and motor vehicle collisions that damage the track, signal gates, or signage. For amounts exceeding \$25,000 Capital Metro will pay the dollar difference upon invoice and proper supporting documentation. The Contractor willThe Contractor shall be responsible at its cost to repair any damage to the rail track, the DMU vehicles, and ancillary equipment (e.g. signal houses, crossing gates, signage) to the extent such damages arise out of or result from Contractor's actual negligence or willful misconduct. Contractor shall be responsible at its cost to repair any damage to the rail track, the DMU vehicles, and ancillary equipment (e.g. signal houses, crossing gates, signage) up to the amount of \$25,000 per incident to the extent caused by the following events that are outside the control of Contractor: vandalism, trespassers, debris strikes, washouts, floods, derailments, wind events, tornadoes, hurricanes, birds strikes, animals, and motor vehicle collisions that damage the track, signal gates, or signage. For such damages, CMTA will pay costs exceeding \$25,000 For amounts exceeding \$25,000 CMTA will pay the dollar difference upon invoice and proper supporting documentation. When CMTA is reimbursed by insurance or a Third Party for costs incurred by the Contractor under \$25,000, CMTA will reimburse the Contractor for monies received after all CMTA costs are fully recovered. CMTA will make a~~

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~~good faith effort to pursue reasonable and appropriate Third-Party reimbursements. However, CMTA is not obligated to pursue the reimbursements.-(Duplicative - See 10.18.2)~~

~~8.11.12.21.~~ The ~~contractor~~Contractor shall provide repairs associated with the conditions above to equipment inclusive of labor (overtime), materials and equipment. Under no circumstances will the ~~contractor~~Contractor submit additional costs for contractor provided equipment and or personnel assigned to this base contract.

~~8.11.1.12.21.1.~~ Security Cameras

~~8.11.1.1.12.21.1.1.~~ All DMUs are equipped with security camera systems. Contractor is responsible for:

~~8.11.1.2.12.21.1.2.~~ Regular inspection and maintenance of the equipment. On board equipment must be inspected monthly and quarterly to ensure that it is in proper working order. Contractor is responsible for all maintenance of this equipment.

~~8.11.1.3.12.21.1.3.~~ CMTA is providing 1 spare digital video recorder (DVR) units to allow for the download of footage without an interruption of recording (that is, when a DVR is pulled for download, it must be replaced with a spare). Vehicles are not permitted in service without a DVR inserted into the system and the green light on the system activated.

~~8.12.12.22.~~ The download of security footage as soon as possible upon CMTA's request. CMTA will request footage within 24 hours of the inciting event. All downloaded footage must be provided within twenty-four (24) hours or sooner of the request. Footage requests may include, but are not limited to, accident footage, close call and serious complaint footage. Contractor must also comply with requests for immediate retrieval of footage, at CMTA's request. Contractor will allow CMTA

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to remove DVR on any vehicle, vehicle or docking station and replace with equivalent at CMTA's discretion.

8.12.1.12.22.1. Other equipment

8.12.1.1.12.22.1.1. The Contractor is responsible for first level support maintenance and inspection of all Intelligent Transportation System (ITS) equipment on board the rail vehicle that includes but not limited to the following:

8.12.1.2.12.22.1.2. Automatic Passenger Counters (APC) sensor

8.12.1.3.12.22.1.3. APC analyzer

8.12.1.4.12.22.1.4. IVU

8.12.1.5.12.22.1.5. MDT

8.12.1.6.12.22.1.6. Data Radio

8.12.1.7.12.22.1.7. GPS antennae

8.12.1.8.12.22.1.8. WLAN

12.22.2. The Contractor is also responsible for first level support maintenance and inspection of passenger WiFi.

12.22.3. ~~The Contractor will~~The Contractor shall provide a maintenance plan for all other equipment (CDRL 12.22.3) no later than 60 days NTP.

12.22.4. The Contractor shall participate with the installation, replacement and removal of all equipment and auxiliary component of the vehicle.

12.23. **Body Work**

12.23.1. ~~The~~ Contractor shall be responsible for all vehicle body repair work and painting. All bodywork and painting will be performed to OEM standards or CMTA specifications.

12.23.2. The Contractor ~~shall is responsible for~~ wrapping a minimum of six (6) DMU's and shall provide the with the option of wrapping four (4) additional DMU's in accordance with the scope of services for 3M Brand Wrapping of Stadler GTW DMUs.

12.23.2.1. ~~3M brand graphic films shall be applied on the exterior of the DMUs per the design specified by Capital Metro~~CMTA. This may also include short term advertising signage in addition to long term graphic films.

12.23.2.2. The following 3M films shall be used:

- Application One; Base Layer - digitally printed by a 3M MCS certified printer with all design elements composited into one layer of the IJ180 or 180 Series

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films. Over laminated with 8528 (gloss), 8588G (for anti-graffiti), or 8518 (gloss) / 8519 (luster).

- -Application Two; used for temporary advertising shall be one layer of base film using IJ3552C with 8518 (gloss), 8519 (luster), or 8520 (matte) overlamine

12.23.2.3. Graphics Installation: Surface preparation and application of markings must be done using the materials, methods and tools described in the appropriate product and instruction bulletins referred to in the Product Specification.

12.23.2.4. The Contractor shall be is-responsible for maintaining paint for all non-wrapped areas. The Paint will consist of a 2-part urethane automotive paint with clear coat.

12.23.2.5. The Contractor shall beis responsible for all decals after wrapping is completed.

12.23.2.6. Warranties: Detailed warranty terms for specific products are provided in the base film's product bulletin in the Product Specification section. Complete details of all warranties are available at 3M.com/graphics.

12.24. Road Calls

12.24.1. The Contractor shall maintain accurate records of all road calls whether the vehicle is changed-out or repaired upon return. Service calls will be reported to CMTA and documented in the asset management system.

12.24.2. The Contractor shall create a repair order for every road call, whether a defect is found or not.

12.24.3. Whenever a vehicle is being put into service, the Contractor is to perform a pre-trip inspection.

12.24.4. Once a vehicle in service reports a condition that causes the vehicle to become out of service, the ~~contractor~~Contractor is to replace the vehicle as soon as possible but not more than 2 hours past the time of report of out of service condition.

12.24.5. It is the responsibility of Contractor to ensure that maintenance personnel are sufficiently trained in all components of the vehicle. Contractor shall provide all training for any maintenance personnel assigned to the contract.

12.25. Rail Vehicle Maintenance Plan

12.25.1. The Contractor shall develop and submit to CMTA for review and approval a Rail Vehicle Maintenance Plan (CDRL 12.25.1) that establishes the specific maintenance requirements for each DMU 60 days after NTP.

12.25.2. The Rail Vehicle Maintenance Plan shall be updated annually.

12.25.3. The Contractor shall maintain Rail Vehicle Maintenance Plan in the Asset Management System.

12.25.4. The weekly Maintenance Report (CDRL 12.25.4) and supporting Asset Management Systems data (CDRL 12.26.41) shall be submitted in a proposed draft form no later than 60 days after NTP for review and approval.

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12.25.5. Once approved by CMTA, the Contractor shall put in place a process for submitting the weekly Maintenance Report to CMTA as established by Mechanical Services. The weekly Maintenance Report shall be submitted to CMTA no later than 3:00 pm on Friday of each week detailing the planned work for the upcoming week (Saturday through Friday).

12.25.6. The weekly maintenance report shall be supported by the Asset Management System and shall contain the actual work performed for the previous week (seven-day period) as presented in the weekly Maintenance Report for the corresponding seven-day period. The report shall detail the status of the work prescribed in the weekly Maintenance Report for the reporting period and shall contain the following information:

~~8.12.1.9.~~12.25.6.1. Actual Date / Time / Shift of work performed;

~~8.12.1.10.~~12.25.6.2. Additional work performed (if any);

~~8.12.1.11.~~12.25.6.3. Actual work location (if different)

~~8.12.1.12.~~12.25.6.4. Actual supervisor and employees assigned to the work

~~8.12.1.13.~~12.25.6.5. Actual material consumed (if different);

~~8.12.1.14.~~12.25.6.6. Actual out of service time; and

12.25.7. System Recovery Plan (if needed) that identifies all tasks not completed and the detail identifying when the incomplete task will be accomplished.

12.26. **Asset Management System**

12.26.1. The Contractor shall use the Asset Management System provided by CMTA and shall retain all necessary records to document the work, track resource utilization, schedule work and forecast requirements as set forth in Asset Management System.

12.27. **Shop Equipment Maintenance**

12.27.1. The Contractor ~~shall be is~~ responsible for the operation, inspection, maintenance and repair of all shop equipment used for the inspection, maintenance and repair of the vehicles ("rolling stock support equipment" or "RSSE").

12.27.2. The Contractor shall identify and perform a condition assessment (CDRL 12.27.2) within 120 days after NTP of all shop equipment designated as RSSE. This shall include, but not be limited to jacks; hoists; bridge cranes; drill presses and other machine shop equipment; train wash equipment; winches; and other equipment and apparatus the Contractor deems RSSE. This assessment shall include an estimate of the remaining life expectancy of each piece of RSSE.

12.27.3. The Contractor shall develop and implement, based on the condition assessment and subject to CMTA review and approval a Maintenance Program (CDRL 12.27.3). The program shall include periodic inspection and maintenance for each piece of equipment as well as scheduled repairs required in order to bring all pieces of RSSE to a Good Working

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Condition. The initial program shall be submitted for review and approval no later than 120 days after NTP. The program shall thereafter be updated annually.

12.28. Additional work

12.28.1. Any additional work pertaining to this section will be modified in accordance to Exhibit A-2.

13. TRAINING AND CERTIFICATION PROGRAM

13.1. Contract Personnel Training Program

13.1.1. The Contractor shall establish and implement a Training Program Plan (CDRL 13.1.1) to provide comprehensive ongoing training programs for all Contractor Personnel involved in conducting and or managing Contract Services, including, any training required by the FRA for the performance of Contract Services. The Contractor shall submit the proposed program to CMTA no later than sixty (60) days after NTP for CMTA approval. The Contractor shall submit training program plan annually.

13.1.2. CMTA must approve all exceptions to the required minimum training standard in writing.

13.1.3. Contractor's training program shall include but not limited to the following:

~~8.12.1.15~~-13.1.3.1. First Responder Training

~~8.12.1.15.1~~-13.1.3.1.1. The Contractor shall provide first responder training to police, fire, emergency services and other municipal first responding entities whose jurisdiction may bring them in contact with Commuter Rail Services.

~~8.12.1.15.2~~-13.1.3.1.2. The Contractor shall develop and implement a first responder training. The first responder training program shall be updated annually and resubmitted to CMTA for approval by September 1st each year.

~~8.12.1.15.3~~-13.1.3.1.3. The Contractor shall develop an internal first responder training program in order to provide Contractor Personnel with the ability to provide emergency medical aid to injured or sick Customers or Contractor Personnel prior to the arrival of Emergency Medical Services.

~~8.12.1.16~~-13.1.3.2. Third Party Training

~~8.12.1.16.1~~-13.1.3.2.1. The Contractor shall provide required safety training to Other Contractors or Third Parties who are approved by CMTA to perform work on the Service Property. The Contractor shall be responsible for obtaining the recovery,

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if any, of its cost for such safety training from such other Contractors or Third Parties.

8.12.1.17.13.1.3.3. Engineer Qualification & Certification Training

8.12.1.17.1.13.1.3.3.1. The Contractor shall develop and implement an Engineer Certification Training Program in accordance with 49 CFR Part 240.

8.12.1.18.13.1.3.4. Maintenance of Way Training

8.12.1.18.1.13.1.3.4.1. The Contractor shall develop and implement a Maintenance of Way Training Program in accordance with the 49 CFR Part 213. MOW, including, but not limited to welding; Railroad Workplace Safety; Bridge Worker Safety; Roadway Worker Protection; GCOR Book of Rules (ops & non-ops classes); track inspection.

8.12.1.19.13.1.3.5. Qualified Maintenance Person Training (QMP) Training

8.12.1.19.1.13.1.3.5.1. QMP training and qualification shall be required of all Contractor Personnel involved in the performance and oversight of Service Equipment inspection and maintenance. QMP training and qualification shall be required for managers charged equipment inspection and oversight. As with other training classes, seats shall be made available to CMTA personnel.

8.12.1.19.2.13.1.3.5.2. All QMP training shall be done in compliance with 49 CFR Part 238.109. All QMP training shall include classroom training and practical "hands-on" training. Maintenance, including, but not limited to DMU Maintenance Person (QMP) qualification; QMP refresher; welding; Refrigerant handling certification; competency; Supervisor skills & qualification; Locomotive Technician skills & qualification; DMU Technician skills & qualification; system safety plan; safety-related; system security plan; emergency response & incident management;

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accident investigation; GCOR book of Rules (ops & non-ops classes); OSHA training; management training and derailment investigation training.

~~8.12.1.19.3-13.1.3.5.3.~~ All tasks related to inspection and maintenance of Service Equipment in compliance with FRA regulations shall be defined in step-by-step written work procedures and included in training sessions.

~~8.12.1.19.4-13.1.3.5.4.~~ All QMP refresher training shall be completed in compliance with 49 CFR Part 238.109.

~~8.12.1.19.5-13.1.3.5.5.~~ The Contractor shall develop and implement a QMP Training Program and a QMP Refresher Training Program in order to ensure compliance.

~~8.12.1.20-13.1.3.6.~~ **Railroad Workplace Safety Training**

~~8.12.1.20.1-13.1.3.6.1.~~ The Contractor shall develop and implement all aspects of Railroad Workplace Safety training, including Bridge Worker Safety and Roadway Worker Protection Training Programs in compliance with 49 CFR Part 214.

~~8.12.1.21-13.1.3.7.~~ **Emergency Preparedness Training**

~~8.12.1.21.1-13.1.3.7.1.~~ The Contractor shall develop and implement an Emergency Preparedness Training Program in compliance with 49 CFR Part 214 and Safety and Security sections of this Contract.

~~8.12.1.22-13.1.3.8.~~ **Customer Service Training**

~~8.12.1.22.1-13.1.3.8.1.~~ The Contractor shall provide, develop and implement a Customer Service SSI (CDRL 13.1.3.8.1). The Customer Service SSI will be used as a basis for the customer service training.

~~8.12.1.22.2-13.1.3.8.2.~~ Customer Service, including, but not limited to communication; emergency response & incident management; system safety plan; safety-related; system security plan; ADA training; management training and derailment investigation training. Designated Contractor staff shall also participate in TxDOT or CMTA sponsored customer service training when notified by CMTA of such schedules.

~~8.12.1.23-13.1.3.9.~~ **Dispatcher Training**

~~8.12.1.24-13.1.3.9.1.~~ The Contractor shall develop and implement a Dispatcher Training Program in accordance with the Dispatcher Training Manual and GCOR rules.

~~8.12.1.25-13.1.3.10.~~ **Positive Train Control Training**

~~8.12.1.25.1-13.1.3.10.1.~~ The Contractor shall arrange for **refresher** on-site training for all Signal Department staff including supervision and management as well as selected CMTA personnel on Positive Train Control systems and **apparatus**. ~~This shall be treated as Supplemental Work with the final scope and~~

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~~schedule to be determined in accordance with the final design~~ apparatuses consistent with the requirements of Section 25.

~~8.12.1.26.13.1.3.11.~~ **Signal System Training**

~~8.12.1.26.1.13.1.3.11.1.~~ The Contractor shall develop and implement a Signal Systems Training Program in accordance with 49 CFR 234 and 236 and GCOR rules. Signal Systems qualification includes but not limited to; system safety plan; safety-related; system security plan.

~~8.12.1.26.2.13.1.3.11.2.~~ Electricians, licensed or otherwise, are not qualified as signalmen until they have completed such training and passed the requisite examinations.

~~8.12.1.27.13.1.3.12.~~ **Supervisor Training**

~~8.12.1.27.1.13.1.3.12.1.~~ The Contractor shall develop and implement a Supervisor Training Program in accordance with 49 CFR 217, GCOR rules and respective discipline.

~~8.12.1.28.13.1.3.13.~~ **Other Training**

~~8.12.1.28.1.13.1.3.13.1.~~ Other training may include emergency response & incident management; accident investigation; OSHA training; management training and derailment investigation training.

~~8.12.1.28.2.13.1.3.13.2.~~ Other transportation management training, including, but not limited to GCOR Book of Rules; Locomotive Engineer Certification and Re-certification; Chief Dispatcher and Dispatcher qualification; Designated Supervisor of Locomotive Engineers qualification; communication; Emergency Preparedness; incident management; accident investigation; system safety plan; safety-related; system security plan; OSHA training; ADA training; management training and derailment investigation training.

~~8.12.1.28.3.13.1.3.13.3.~~ The Contractor shall identify in the Training Program Plan, training for each functional area of the Contract.

~~8.12.1.28.4.13.1.3.13.4.~~ The Training Program Plan shall include a course syllabus; competency test questions; requirements for passing the course; and associated teaching materials.

~~8.12.1.28.5.13.1.3.13.5.~~ The Contractor shall schedule training activities so as to not interfere with its provision of Contract Services.

~~8.12.1.28.6.13.1.3.13.6.~~ The Contractor shall notify the CMTA Vice President of Rail Operations or designee of all training for new hires. The Vice President of Rail Operations or designee may address the new hires during such training. CMTA reserves the right to evaluate the effectiveness of the Contractor's training and retraining programs.

~~8.12.1.28.7.13.1.3.13.7.~~ ~~The Contractor will~~ The Contractor shall provide CMTA with a Monthly Training Report (CDRL 13.1.3.1413.7), which will list and describe each training session conducted during the month; the number of hours of training

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completed by each employee; and the names of each employee who participated in each such training session as well as the employee's test results.

~~8.12.1.28.8.13.1.3.13.8.~~ A qualified Supervisor/Instructor of Locomotive Engineers, Dispatchers, Rail Vehicle Maintenance, Maintenance of Way, Signal Maintenance, Communication Maintenance, and Material Maintenance will evaluate each employee under the contract at least every six (6) months in addition to any federally mandated training.

~~8.12.1.28.9.13.1.3.13.9.~~ Safety Training Plan- Each individual employed under the contract shall receive ongoing Safety Training. This training shall include monthly safety meetings for all employees, review of at-risk events in the rail industry and daily job briefings at on-duty location. The Safety Plan shall include a program for retraining after accidents, incidents, and critical rule violations. This training will be in addition to the required fourteen (14) hours of annual refresher training.

~~8.12.1.28.10.13.1.3.13.10.~~ Personal Safety- The ~~contractor~~Contractor Training Program shall include training in Transportation Security/Terrorism, theft/robbery prevention, violence in the workplace, and assault prevention.

~~8.12.1.28.11.13.1.3.13.11.~~ The Training Program will be conducted with a combination of classroom and field instruction. The training will be supervised by a certified instructor and/or Designated Supervisor.

~~8.12.1.28.12.13.1.3.13.12.~~ Refresher Training- the Training Program shall include annual refresher training for all employees employed by the ~~contractor~~Contractor. A minimum of fourteen (14) hours of refresher training is required for each employee. Annual refresher training should cover pertinent topics to improve performance but must include at least (2) hours of ADA compliance and assistance to persons with disabilities and six (6) hours of refresher training on customer service.

~~8.12.1.28.13.13.1.3.13.13.~~ Training- Contractor will provide training for all personnel working on this contract. It is the sole responsibility of Contractor to ensure that each individual is fully knowledgeable of their duties and responsibilities and can operate in a safe and proficient manner. It is also Contractor's responsibility to provide additional training if the training requirements specified by ~~Capital Metro~~CMTA are insufficient. ~~Capital Metro~~CMTA reserves the right at a later date to specify the training programs required.

~~8.12.1.28.14.13.1.3.13.14.~~ The Contractor shall provide designated CMTA employees training including, but not limited to GCOR Book of Rules; Locomotive Engineer Certification and Re-certification; Dispatcher qualification; Emergency Preparedness; incident management; accident investigation; OSHA training; ADA training; management training and derailment investigation training.

~~8.12.1.28.15.13.1.3.13.15.~~ The Contractor shall also provide training and certification for up to five freight and excursion partners as CMTA deems necessary as roadway worker protection and ~~employee~~roadway worker in charge (~~EICRWIC~~).

~~8.12.1.28.16.13.1.3.13.16.~~ The Contractor shall provide locomotive engineer training on the DMU equipment to 1 designated ASTA partner as determined by CMTA.

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13.2. CMTA Approval of Training Programs

- 13.2.1. The Contractor shall provide CMTA with copies of course descriptions for training programs outlined in the Employee Training Program Plan (CDRL 13.2.1) no later than 90 days NTP.
- 13.2.2. CMTA shall have the right to inspect and copy all training programs and other training materials used for Contractor Personnel who are performing Contract Services or that are otherwise used by the Contractor.
- 13.2.3. The Contractor shall arrange for an annual meeting with CMTA to review the Training Program Plan no later than 45 days after submission of the plan. The plan shall include a schedule for quarterly joint CMTA/Contractor review of training program progress and a process to facilitate changes in the plan when necessary.
- 13.2.4. In accordance with this Contract, the Contractor shall develop and implement a training program for emergency response agencies, (e.g., fire and police), subject to responding to incidents along the Right-of-Way or other Service Property.

13.3. Failure to Complete Training

- 13.3.1. The failure of any Contractor Personnel to successfully complete legally required training included in the approved Annual Training Program Plan shall be the basis for removing such Contractor Personnel from further performance of the Contract Services requiring such training until the employee successfully completes the required training.

- 13.4. The Contractor shall provide an operations testing plan report in accordance with 49 CFR 217.

14. OPERATING RULES AND SUPPORT DOCUMENTS

14.1. Administration

- 14.1.1. The Contractor shall issue and maintain an Employee Timetable, Operating Rule Book, System Special Instructions, Airbrake and Train Handling Rules (ABTH) and Train Dispatcher's Manual (CDRL [14.1.514.1.5](#)), which shall contain all the information, rules and special instructions, Bulletins, Notices' and Contractor Personnel need to perform their duties and which shall be provided to CMTA for review prior to issuance.
- 14.1.2. Provided as an example are the employee timetable (**Exhibit J- Attachment 5**), special instructions (**Exhibit J-Attachment 6**), GCOR (**Exhibit J-Attachment 4**) and train dispatcher manual are provided in **Exhibit J**.
- 14.1.3. The Contractor shall require that the Employee Timetable, ABTH, Operating Rule Book, and/or Train Dispatcher's Manual or relevant section be carried by each employee while on duty who requires this information to perform his or her duties.
- 14.1.4. The Contractor shall review, revise, conform, reformat and edit the source documents according to the requirements of the Draft Employee Timetable, Operating Rule Book, and Train Dispatcher's Manual of the Commuter Rail Services section of this Contract.
- 14.1.5. The Contractor shall submit a draft Employee Timetable, System Special Instructions, Timetable General Orders, Airbrake and Train Handling Rules (ABTH) and Train Dispatcher's Manual (CDRL 14.1.5) to CMTA no later than 90 days after the NTP CMTA will review the draft Employee Timetable, Operating Rule Book, Special Instructions and Train Dispatcher's Manual and return suggested revisions to the Contractor not later than 30 days after submittal

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of the draft. The Contractor may request reconsideration of CMTA's revisions, which CMTA shall not unreasonably deny during the next 15 days.

- 14.1.6. The Contractor shall ensure that all information, instructions and rules necessary for safe, efficient and courteous operations are included in the final Employee Timetable, Operating Rule Book, System Special Instructions and Train Dispatcher's Manual.

14.2. Customer Service Special Instructions

- 14.2.1. The Contractor must provide the Contract Services that involve interface with CMTA's Customers with the highest degree of courtesy and professionalism. All requirements that related to the customer interface shall be contained within the Customer Service Special Instructions (~~Instructions~~ (CDRL ~~13.1.3.8.1~~~~13.1.3.8.4~~), even if such requirements also appear in other sections of the Employee Timetable or Operating Rule Book or Train Dispatchers' Manual.

~~8.12.1.29~~14.2.1.1. Miscellaneous required elements of the Customer Service Special Instructions:

~~8.12.1.30~~14.2.1.2. Professional conduct;

~~8.12.1.31~~14.2.1.3. Personal appearance;

~~8.12.1.32~~14.2.1.4. Dress code;

~~8.12.1.33~~14.2.1.5. Nametag requirement;

~~8.12.1.34~~14.2.1.6. On-board announcements;

~~8.12.1.35~~14.2.1.7. Lost and found policy;

~~8.12.1.36~~14.2.1.8. Check train.

15. CONTRACTOR CUSTOMER SERVICE RESPONSIBILITIES

15.1. Lost & Found Services

~~8.12.1.37~~15.1.1.1. The Contractor shall provide lost & found services at North Ops facility. Lost & found services shall include, but not be limited to, collecting lost items on trains and at stations and keeping a log of these items to assist patrons in retrieving their possessions.

~~8.12.1.38~~15.1.1.2. The Contractor shall develop a set of standard procedures for lost & found services. This set of procedures shall be submitted to CMTA within 60 days after NTP for approval.

~~8.12.1.39~~15.1.1.3. The Contractor must deliver all recovered items to CMTA's transit store. Delivery should be made prior to 2:00 p.m. on the following business day. Recovered

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items must be gathered from the Contractor's main office, Service Island and Dispatch, tagged and recorded in a ledger.

15.2. **Public Information Materials**

15.2.1. The Contractor shall post CMTA-approved promotional materials, public information and current Service Schedules (**Exhibit J – Attachment 9**) as provided required by CMTA. All information materials posted by the Contractor shall be weather resistant.

15.2.2. The Contractor shall post updated Service Schedules prior to their effective date. The Contractor shall maintain and stock CMTA promotional materials and current train schedules as required by CMTA.

15.3. **Station Electronic Messages**

15.3.1. The Contractor shall immediately inform Customers of train delays, service interruptions and emergencies using computer monitors, electronic message boards and other systems provided by CMTA. The Contractor shall immediately inform customers of emergencies and security issues.

15.3.2. The Contractor shall input of customer service information for all automated messages, from the CMTA Rail Dispatching Center or at locations designated by CMTA.

~~15.3.3. The Contractor shall ensure that the content, format and timing of all station announcements and messages are in compliance with the requirements of all federal, state and local laws and regulations.~~

15.4. **On-Board Announcements**

15.4.1. Train engineers shall make announcements on-board all Revenue Trains, as required by the Employee Timetable (**Exhibit J-Attachment 5**) and Customer Service Instructions, CMTA policies and procedures and the ADA.

15.4.2. Train engineers shall announce from terminal station platforms the train destinations to Customers prior to departure.

15.4.3. Train engineers shall activate the available on-board automated announcement system. In the event that the automated system is unavailable or malfunctioning, the Train engineers

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shall make all announcements the train destinations to Customers as trains approach and depart from each Station.

15.4.4. Train engineers shall provide timely and accurate delay information in accordance with the Notification of Delays to the Public section of this Contract.

15.4.5. Train engineers shall immediately inform Customers about emergencies and security issues. Train engineers must be knowledgeable of all CMTA services and all emergency and security policies and procedures.

15.4.6. Train engineers shall perform their duties in a courteous, efficient and competent manner and shall not make any inappropriate announcement or include any personal opinion or editorial in any announcement.

15.5. **Respond to Public Comments and Complaints**

15.5.1. The Contractor shall investigate all compliments, comments and complaints pertaining to service delivery or the actions of Contractor Personnel.

15.5.2. Comments and complaints received by CMTA will be collected by CMTA in writing, in electronic form, and by telephone and forwarded to the Contractor. ~~The Contractor will~~The Contractor shall forward promptly any comments and complaints received to CMTA.

15.5.3. The Contractor shall respond to any customer comments or complaints forwarded from CMTA or received by the Contractor directly from a Customer within four Business Days.

15.5.4. The Contractor shall prepare a written report stating the circumstances for the complaint and any corrective action taken. This response shall be entered and maintained in the Customer Call Report database (CCR) within four Business Days after receipt by the Contractor of the complaint whether received from CMTA or received directly (**Exhibit J – Attachment 24 Customer Service Report Database**).

15.5.5. If the comment or complaint requires additional investigation after the initial response the Contractor shall enter updates into the CCR database on the status of the investigation every five Business Days, or at intervals agreed to by CMTA.

15.5.6. The Contractor also shall maintain a record of all complaints received and responses made about individual Contractor Personnel in the CCR database.

15.5.7. All records shall be made available at the request of CMTA in either hard copy or electronic format on demand in the CCR database (**Exhibit J – Attachment 24**).

15.5.8. The Contractor shall prepare and submit to CMTA monthly reports (CDRL 15.5.8) detailing the number of Customer comments and complaints, broken down by various categories (CDRL 15.5.8).

15.5.9. CMTA's Customer Service department operates a call center for intake of all customer complaints. When Contractor receives a phone call or written passenger complaint directly,

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details regarding the complaint must be forwarded to the CMTA Customer Service department for inclusion into the CMTA database.

15.5.10. ~~The Contractor will~~The Contractor shall document resolutions to each complaint in the CCR database

15.5.11. The Contractor shall notify the VP Rail Operations or designee immediately of any complaint alleging employee misconduct such as inappropriate conversation, touching, assault, (physical or verbal), etc.

15.6. **Coordination with Subcontractors and Third-Party Contractors**

15.6.1. The Contractor shall maintain frequent and ongoing communications with any Third Party and a subcontractor concerning such Third Party's schedules, delays, construction scheduling and similar matters.

15.6.2. The Contractor shall provide timely and accurate information concerning delays or unusual conditions related to any Third Party.

15.7. **Provision of Alternate Transportation (i.e. Bus Bridge Exhibit J Attachment 10)**

15.7.1. The Contractor shall develop and submit for approval, distribute and implement protocols (CDRL 15.7.1) for handling alternate transportation for Customers during Emergencies, Service Disruptions, planned maintenance work and track outages, and as otherwise necessary to reduce the effect of cascading delays and to minimize Service Disruptions. The Contractor shall submit to CMTA for approval no later than 90 NTP.

15.7.2. The Contractor shall implement the alternate transportation protocols, including arranging for and coordinating bus or other transportation for Customers during Emergencies and Service Disruptions. The Contractor shall also arrange for and coordinate such alternate transportation during planned maintenance work and planned track outages, and as otherwise necessary to prevent or mitigate delays or Service Disruptions.

15.7.3. The Contractor shall notify the Vice President of Rail Operations or designee and CMTA Railroad Operations immediately of the need for alternate transportation.

15.7.4. The Contractor shall provide notification of the use of alternate transportation through incident notification and other announcement systems at affected Stations and on-board affected trains.

15.7.5. The Contractor shall provide personnel at affected Stations and on-board affected trains to assist Customers and coordinate the use of alternate transportation. Personnel shall be easily identified with approved safety vest.

15.8. **Accommodation of People with Disabilities**

15.8.1. The Contractor shall include accommodating persons with disabilities in compliance with all federal, state and local accessibility laws and regulations, and as described in this Contract.

15.8.2. Any audits or other reports covering ADA compliance shall be forwarded to CMTA immediately.

15.8.3. In addition to the Contractor's other obligations: (i) the Contractor shall notify CMTA immediately upon (and, in no event, more than twelve (12) hours after) the Contractor's

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receipt of a Customer comment or complaint relating to the ADA, and (ii) the Contractor shall notify CMTA.

16. PERFORMANCE REQUIREMENTS, MEASUREMENT AND MANAGEMENT

~~8.13.16.1.~~ The service property, vehicles ~~and~~, train control, signal and communications equipment shall be maintained to achieve performance levels expected through the design, construction, maintenance and normal service life. The Performance Requirements, Measurement and Management establishes standards for measuring and maintaining acceptable levels of performance.

~~8.14.16.2.~~ The service property, vehicles, train control, signal and communications equipment shall be operated and maintained in compliance with all applicable legal, regulatory, OEM and CMTA requirements.

~~8.15.16.3.~~ The Contractor shall apply maintenance consistent with the requirements of this Contract and CMTA approved maintenance plans. The Contractor shall not be permitted to defer maintenance or repair work without the prior written permission of CMTA.

~~8.16.16.4.~~ For the purpose of performance measurement, a "failure" is a malfunction or defect that causes the train service to be delayed along its route, an equipment or component changeout for defects, service interruptions or missed stations (including passenger, commuter and freight service). Any component on any system that has malfunctioned or determined to be defective is considered a failure. The failure is tracked on a "per incident" basis. If the equipment, signal, crossing, bridge or track is kept in service and subsequent failures occur, each failure shall be counted as a new failure.

~~8.17.16.5.~~ The Contractor shall not permit the service property, vehicles ~~or~~, train control, signals and communications equipment to be in a state of Long-Term Out-of-Service for extended periods, without the prior written approval of CMTA.

~~8.18.16.6.~~ Any vehicle, property or equipment that is not available for intended use or performance for greater than seven (7) days during a fifteen (15) continuous, calendar day period shall be considered a Long-Term Out-of-Service, unless otherwise specified in the contract.

~~8.19.16.7.~~ The Contractor shall submit a Long-Term Out-of-Service Release Plan (CDRL 16.7) to CMTA for review and approval within five (5) days of the Long-Term Out-of-Service designation.

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This plan shall provide details on the procedures and schedule for restoration of all Contractor's Long-Term Out-of-Service Status Report (CDRL 16.7) to CMTA every month.

~~8.20.16.8.~~ Major repair work must be completed no later than thirty (30) calendar days from the failure date.

16.9. Performance Measures

16.9.1. "Disincentives" or "PDC(s)" are defined as performance deficiency credits against amounts owing to Contractor for failure to meet contract requirements. PDCs are identified in **Exhibit J Payment Adjustment** of this contract.

16.9.2. Certain incentives and disincentives will be applied based on performance by Contractor.

16.9.3. The following performance measurements and goals will be used by CMTA for evaluation under this contract. ~~Capital Metro~~CMTA reserves the right to change the requirements at any time.

~~8.20.1.16.9.4.~~ Safety

~~8.20.1.1.16.9.4.1.~~ Passenger and vehicle ~~accident~~accidents will be evaluated based on the accident data reported by ~~Capital Metro~~CMTA Risk Management department monthly.

~~8.20.1.2.16.9.4.2.~~ Passenger accidents are calculated as the total number of reported passenger accidents by the risk management department monthly, divided by the total passenger miles reported by the planning department monthly, times 10,000 miles.

~~8.20.1.3.16.9.4.3.~~ The passenger accident goal is not to exceed .25 passenger accidents per 10,000 passenger miles.

~~8.20.1.4.16.9.4.4.~~ ~~Vehicle accidents are calculated as the total number of All~~ vehicle accidents, ~~will be~~ reported ~~and tracked monthly~~ by risk management ~~monthly-as preventable or non-preventable.~~

~~8.20.1.5.16.9.4.5.~~ The ~~preventable~~ vehicle accident goal is not to exceed ~~two (2)~~ annually.

~~8.20.2.16.9.5.~~ Mean Distance Between Failure

~~8.20.2.1.16.9.5.1.~~ Mean distance between failures ("MDBF") shall be calculated by CMTA for the fleet on a monthly basis.

~~8.20.2.2.16.9.5.2.~~ The MDBF shall be calculated as the total vehicle miles, reported by CMTA, divided by the total mechanical failures resulting in a service delay of 6 minutes or more from the scheduled departure time at the station, annulled station or annulled trip. ~~The MDBF shall be calculated as the total vehicle miles, reported by planning, divided by the total mechanical failures.~~

~~8.20.2.3.16.9.5.3.~~ For the purpose of measuring MDBF for this contract the goal is 15,000. Subject to annual performance adjustment by CMTA.

~~8.20.2.4.16.9.5.4.~~ The Contractor shall also monitor and report DMU service vehicle MDBF (CDRL 16.9.5.4) on an individual vehicle basis to ascertain whether there are any problematic vehicles that require immediate action. In other words, MDBF shall also be

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calculated for each individual DMU as a means of tracking vehicle-specific performance.

8.20.3.16.9.6. Customer Complaints

8.20.3.1.16.9.6.1. Customer complaint rate is calculated as the total number of complaints, reported by ~~Capital Metro~~CMTA Customer Service, divided by the total passenger ridership, reported by planning, times 20,000.

8.20.3.2.16.9.6.2. As a goal, the complaint rate shall not exceed 5 complaints per 20,000 passengers.

8.20.3.3.16.9.6.3. Contractor shall respond to passenger complaints within four (4) business days of receipt comment.

8.20.3.4.16.9.6.4. Response time will be based on the turnaround time reported by customer service in the CCR database

8.20.4.16.9.7. On Time Performance

8.20.4.1.16.9.7.1. The Contractor shall provide Commuter Rail Services in accordance with the Service Schedules.

8.20.4.2.16.9.7.2. The Contractor shall determine, record, calculate and report to CMTA the On Time Performance. "On Time Performance" shall be reported in terms of an on time performance percentage where:

8.20.4.2.1.16.9.7.2.1. The total number of scheduled train timepoints LESS the sum of:

8.20.4.2.1.1.16.9.7.2.1.1. Number of Annulled Trips;

8.20.4.2.1.2.16.9.7.2.1.2. The number of Missed Stations and

8.20.4.2.1.3.16.9.7.2.1.3. The number of trains arriving at the station more than five minutes and fifty-nine seconds (5:59) later than scheduled.

8.20.4.2.1.4.16.9.7.2.1.4. Divided by the total number of train timepoints scheduled during the reporting period

8.20.4.3.16.9.7.2.2. On Time Performance will be measured from timepoints Downtown, MLK Jr., Howard, Lakeline and Leander stations.

8.20.4.4.16.9.7.2.3. The Contractor shall maintain, in electronic form, a historical record of On Time Performance for each trip for which the Contractor is providing

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Commuter Rail Services. The Contractor shall also maintain records of the number of Late Trains, Missed Stations and Annulled Trips.

~~8.20.4.5-16.9.7.2.4.~~ The Contractor shall also ensure freight or excursion rail operations are not delayed based on decisions or actions of commuter rail service operations or dispatching.

~~8.20.5.16.9.8.~~ Vehicle Service Failures

~~8.20.5.1.16.9.8.1.~~ Service Failures are defined as in-service failures of vehicle systems that do not affect the On Time Performance of the train or MDBF calculations, but affect the passengers. These failures include, but are not limited to:

~~8.20.5.1.1.16.9.8.1.1.~~ HVAC System Failure – Failure to maintain temperatures within the design values;

~~8.20.5.1.2.16.9.8.1.2.~~ Door Failure - Failure of a door to operate as designed;

~~8.20.5.1.3.16.9.8.1.3.~~ Lighting System Failure – Failure of the lights in the interior of the vehicle to remain illuminated for the duration of the trip;

~~8.20.5.1.4.16.9.8.1.4.~~ Cleanliness Failure – Failure of the vehicle to be maintained in a clean state as required through the application of the Daily MI;

~~8.20.5.1.5.16.9.8.1.5.~~ Communication System Failure – Failure of the Public Address System, Intercom, Signage or Vehicle Radio while in service; and

~~8.20.5.1.6.16.9.8.1.6.~~ Ride Quality Failure – Failure of the truck and suspension system to provide the designed ride quality.

~~8.20.6.16.9.9.~~ Vehicle Availability

~~8.20.6.1.16.9.9.1.~~ Contractor will be required to have 80% of rail vehicles available for standard revenue service. Vehicle shall be prepared for revenue service at least two hours before the start of revenue service. Contractor will submit, for approval, the methodology that will be used to report vehicle availability.

~~16.9.9.2.~~ The Contractor shall make a good faith effort to operate all trains equally over the course of a year, with no train deviating more than 10% from the fleet-wide average annual mileage. In cases where a planned overhaul or serious accident removed a train from service for a significant amount of time, its annual mileage should not deviate more than 10% from a fleet-wide average pro-rated for the time it was out of service.

~~8.20.6.2.16.9.9.3.~~ The deductions for vehicle availability shall be made by Capital MetroCMTA when 1) reported by the contractor 80% of vehicles are not available two hours before the start of service; 2) reported by a vehicle operator the vehicle is inoperable during deadhead; 3) reported by vehicle operator the vehicle is inoperable

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before departing the yard; or 4) documented by maintenance in the asset management system.

8.20.7.16.9.10. Preventive Maintenance

8.20.7.1.16.9.10.1. Preventive Maintenance (PM) Inspections and repairs are required for all revenue vehicles. Vehicles operating with past due inspections will be assessed PDC by ~~Capital Metro~~CMTA when maintenance: 1) exceeds maintenance date recorded in the asset management system; 2) the Contractor reports the preventive maintenance was not performed; or 3) documented by ~~Capital Metro~~CMTA as out of compliance with maintenance plan or OEM specifications.

8.20.8.16.9.11. Vehicle Condition

8.20.8.1.16.9.11.1. Contractor shall ensure that all vehicles in revenue service do not have any out-of-service criteria items. Out of service criteria shall be evaluated based on the "Out of Service Criteria when: 1) reported by a customer and verified by the Contractor; 2) reported by the vehicle operator; 3) Contractor reported in the asset management system; 4) Contractor observes and reports during inspection or 5) ~~Capital Metro~~CMTA reports during routine and random inspections

8.20.8.2.16.9.11.2. Should an out of service criteria item occur while the vehicle is in revenue service, Contractor shall arrange for a replacement of the failed vehicle within two hours from the time the failure was reported. Contractor shall ensure that malfunctioning vehicles are removed from service.

8.20.8.3.16.9.11.3. ~~Capital Metro~~CMTA will assess a PDC if the Contractor fails to remove the vehicle from service within two (2) hours. If the vehicle must be towed, the assessment will occur after a day.

8.20.9.16.9.12. Cleanliness

8.20.9.1.16.9.12.1. Cleanliness shall be evaluated based ~~on: on~~ 1) verified customer comments; 2) Contractor inspections report; or 3) ~~Capital Metro~~CMTA routine and random inspections

8.20.9.2.16.9.12.2. Contractor shall maintain the cleanliness of all maintenance work areas to include the shop facility, materials/supply storage facility and the vehicle service location.

8.20.9.3.16.9.12.3. Contractor shall clean all vehicles according to the standards defined in the maintenance plan.

8.20.9.4.16.9.12.4. Contractor inspections will be conducted to ensure the facilities and vehicles are cleaned according to standard. A PDC will be assessed for each incident in which the Contractor fails to clean facilities or vehicles as required.

8.20.10.16.9.13. Speed Restrictions

8.20.10.1.16.9.13.1. CMTA reserves the right to establish maximum authorized speeds for specific track segments, based on the maintenance class of track. Contractor shall maintain track at CMTA Class IV or better (**Exhibit J Attachment 27**). All activities

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undertaken in the performance of the agreement shall further CMTA's goal of 60 miles per hour track speeds on the Central Subdivision.

~~8.20.10.2.16.9.13.2.~~ The Contractor shall maintain the performance level of the Central Subdivision to allow Transportation Services to be provided at speeds no less than the Maximum Authorized Speeds in existence on the date that the Agreement is executed, or higher, as maximum authorized speeds are increased during the term of this Contract.

~~8.20.10.3.16.9.13.3.~~ Temporary speed restrictions imposed by the contractor shall be corrected within 30 days from the date the speed restriction was imposed.

~~8.20.11.16.9.14.~~ Bridges

~~8.20.11.1.16.9.14.1.~~ Bridge level and capacity will be calculated based ~~on: on~~ 1) The Contractor's data entered into the asset management system during, special, interim and annual inspections; 2) The Contractor's bridge inspector's documentation of the bridge inspections; 3) The ~~Capital Metro~~CMTA special, interim and annual inspections.

~~8.20.11.2.16.9.14.2.~~ The Contractor shall maintain bridges on the Central Subdivision at CMTA level 3 or better with a load capacity of 286,000 pounds in accordance with the Bridge Management Safety Program. ~~(this~~This requirement does not include the UPRR Commuter Overpass)

~~8.20.11.3.16.9.14.3.~~ ~~Capital Metro~~CMTA will assess PDC if the Contractor fails to maintain the bridges in the Central Subdivision at CMTA level 3 or better with load capacity of 286,000 pounds or better.

~~8.20.12.16.9.15.~~ Right of Way Maintenance

~~8.20.12.1.16.9.15.1.~~ Right of way shall be evaluated based ~~on: on~~ 1) verified customer comments; 2) right of way inspections reported by the Contractor; 3) defects noted during random and/or routine inspections by ~~Capital Metro~~CMTA Rail Operations

~~8.20.12.2.16.9.15.2.~~ The Contractor shall remove all trash and debris immediately, and in no event longer than 24 hours after discovering or receiving notice from CMTA of the existence of trash and debris.

~~8.20.12.3.16.9.15.3.~~ Scrap rail and relay rail shall be removed from the Right of Way by the Contractor within 30 days of removal from the track.

~~8.20.12.4.16.9.15.4.~~ Vegetation and trees identified by CMTA as a nuisance or safety hazard shall be removed by the Contractor with due diligence, and in any event, not later than 5 days after notification by CMTA.

~~8.20.12.5.16.9.15.5.~~ Graffiti shall be removed expeditiously, and in no event longer than 24 hours after receipt of a report of graffiti at any location on the Central Subdivision.

~~8.20.13.16.9.16.~~ Train Control and Signal Maintenance

~~8.20.13.1.16.9.16.1.~~ The Contractor shall ensure the reliability of signal equipment to minimize defects and repeat defects of crossings and ~~wayside~~ signals systems.

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Calculation of signal failures ~~is~~will be based ~~on~~on 1) verified defects reported by the public; 2) credible reports of malfunctions from law enforcement, or **Capital MetroCMTA**; 3) failures documented in the asset management system or the incident management report by the Contractor; 4) defects or failures noted during random and/or routine inspections by FRA, TxDOT or **Capital MetroCMTA**.

~~8.20.13.2-16.9.16.2.~~ Contractor shall have no more than five (5) defects within seven (7) consecutive days.

~~8.20.13.3-16.9.16.3.~~ Contractor shall not have more than three (3) repeat defects within thirty (30) consecutive days of the original defect.

~~8.20.13.4-16.9.16.4.~~ Contractor shall correct noted defect within thirty (30) days of the date reported from any source (including FRA).

17. QUALITY

~~8.21.17.1.~~ The Contractor shall establish and implement a Quality Assurance Program (the "Quality Assurance Program"), ~~and~~ and provide sufficient quality assurance ("QA") and quality control ("QC").

~~8.22.17.2.~~ The Quality Assurance Program shall set out the organization, processes, and resources needed to achieve consistency and uniformity of work performed by the Contractor, Subcontractors, manufacturers and suppliers through implementation of and adherence to documents described in the QAP.

~~8.23.17.3.~~ The Quality Assurance Program shall include the following general requirements, at a minimum:

- 17.3.1.1. Management responsibility
- 17.3.1.2. Inspection and testing methodology
- 17.3.1.3. Inspection Standards
- 17.3.1.4. Control of non-conformance
- 17.3.1.5. Corrective and Preventive Action
- 17.3.1.6. Audits
- 17.3.1.7. Training

~~8.24.17.4.~~ The Contractor shall conduct quality inspections required to demonstrate full compliance of Contract.

~~8.25.17.5.~~ The Contractor shall provide an inspection system capable of producing objective evidence that materials ~~provided~~provided, and finished work performed by the Contractor meet the quality requirements of this Contract.

~~8.26.17.6.~~ The Contractor shall identify the process whereby CMTA is assured that the maintenance work performed on CMTA's assets (DMUs, track, bridges, signal, communication and other CMTA property used in the performance the Contract) is compliant with the OEM and CMTA-approved

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maintenance procedures established for these assets. Such process shall be in compliance with the Quality Control Plan.

~~8.27.17.7.~~ The inspection system shall be considered acceptable when, as a minimum, it provides for the detection and removal of non-conforming work or material where it can be corrected prior to placement into a more progressive state (e.g., for a DMU – prior to being placed into revenue service; for a report or document – prior to being submitted to CMTA).

~~8.28.17.8.~~ The Contractor's General Manager or designee will provide oversight of quality assurance.

~~8.29.17.9.~~ The Contractor shall designate Quality Assurance Representatives ("QAR") within its organization who shall report to the General Manager or designee. The QARs may have other duties as well as QA and ~~QR, but QR but~~ will be the designated representative within their area of the Contractor's organization. At a minimum, ~~QAR's~~ QARs shall be designated for:

17.9.1. Transportation Services

17.9.2. Dispatching Services

17.9.3. Maintenance of Way Services

17.9.4. Maintenance of Signals and Communications Services

17.9.5. Rail Vehicle Maintenance Services

17.9.6. Materials Management Services

~~8.30.17.10.~~ The Contractor may designate such additional ~~QAR's~~ QARs as are necessary to achieve the requirements of this Contract.

17.11. **Contractor Quality Assurance Plan (CQAP)**

17.11.1. The Contractor shall develop and implement a Contractor Quality Assurance Plan (CDRL 17.11.1). The CQAP shall be submitted for CMTA review and approval no later than 120 days after NTP.

17.11.2. The Contractor shall implement the CQAP under its Quality Assurance Program and those of its Subcontractors, manufacturers and suppliers, as applicable.

17.11.3. The CQAP shall consist of the documented procedures, policies, plans, and organization activities of the Contractor, Subcontractors, manufacturers, and suppliers, which

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shall assure that all work, materials, testing, and documentation conforms to the requirements.

17.11.4. The CQAP shall include:

~~8.30.1.1.~~17.11.4.1. The Contractor's Organization Chart showing the lines of authority.

~~8.30.1.2.~~17.11.4.2. Responsibility for quality assurance and its relationship with other functions

~~8.30.1.3.~~17.11.4.3. Titles and names of key personnel

~~8.30.1.4.~~17.11.4.4. Titles and functions of all quality personnel

~~8.30.1.5.~~17.11.4.5. The quality management system for each area of the Contractor's work shall be defined including, but not limited to:

~~8.30.1.5.1.~~17.11.4.5.1. Transportation

~~8.30.1.5.2.~~17.11.4.5.2. Customer Service

~~8.30.1.5.3.~~17.11.4.5.3. Dispatching Services

~~8.30.1.5.4.~~17.11.4.5.4. Maintenance of Way

~~8.30.1.5.5.~~17.11.4.5.5. Maintenance of Signals

~~8.30.1.5.6.~~17.11.4.5.6. Rail Vehicle Maintenance

~~8.30.1.5.7.~~17.11.4.5.7. Material Management

~~8.30.1.5.8.~~17.11.4.5.8. Documentation and Reporting

~~8.30.1.5.9.~~17.11.4.5.9. Maintenance of Communications

17.11.5. Within the work areas, processes, procedures, and criteria shall be developed to measure compliance with the Contract and requirements of the specific activity.

17.11.6. Specific requirements that must be addressed in the CQAP include, but not be limited to:

~~8.30.1.6.~~17.11.6.1. Quality Management System

~~8.30.1.7.~~17.11.6.2. Control of Documents

~~8.30.1.8.~~17.11.6.3. Control of Records

~~8.30.1.9.~~17.11.6.4. Management Responsibility

~~8.30.1.10.~~17.11.6.5. Resource Management

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~~8.30.1.11.~~17.11.6.6. _____ Product Realization (Rail Service and Maintenance)

~~8.30.1.12.~~17.11.6.7. _____ Measurement, Analysis and Improvement

~~8.30.1.13.~~17.11.6.8. _____ Internal Audits

~~8.30.1.14.~~17.11.6.9. _____ Control of non-conforming product

~~8.30.1.15.~~17.11.6.10. _____ Corrective action

~~8.30.1.16.~~17.11.6.11. _____ Preventive action

17.12. Standards and References

17.12.1. In order to assure that all work is carried out within the terms of this Contract, the Contractor shall follow industry and national standards where ~~applicable, or~~ applicable or develop standards for approval by CMTA.

17.12.2. All procedures, processes and instruction documents shall be referenced to recognized national standards documents where appropriate, such as FRA, ANSI, etc.

17.12.3. To the extent practical, all maintenance documents for equipment, systems, and purchased items shall be based upon and referenced to the latest instructions of the OEM.

17.12.4. When OEM instructions are not available, or not relevant to CMTA applications, the Contractor shall develop a proposed standard for CMTA to review with supporting documentation.

17.12.5. Once approved by CMTA, a standard shall be maintained and documented through the configuration management system. Any corrective action that requires changes in plans or procedures will be reviewed through the configuration management process (**Exhibit J Attachment 8**)

17.12.6. The Calibration standards shall be traceable to the National Bureau of Standards.

17.12.7. The Calibration history and frequency records shall be maintained and available.

17.12.8. The Calibration dates and due dates shall be displayed on equipment.

17.12.9. The Contractor shall ensure that workmanship is maintained at a level of quality consistent with the technical and functional requirements of the work.

17.12.10. Workmanship shall be defined to the greatest practical extent by written standards, accepted by the Contractor and CMTA as examples of satisfactory workmanship.

17.12.11. The Contractor shall submit written workmanship standards (CDRL 17.12.11) that must be referenced to a recognized standard. This may include reference to CMTA Technical Specification(s). These standards shall be submitted no later than 120 days after NTP, and upon acceptance by CMTA shall become the standard to which Contractor workmanship

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performance is measured. The accepted Standards shall become an appendix to this Contract.

17.12.12. The Contractor employees engaged in performing work which requires specialized training and/or certification shall have the records of that training and qualification maintained in a system that:

~~8.30.1.17.12.12.1.~~ Is available to QA personnel to verify the worker's qualification to do the work during audits and inspections

17.12.13. The Contractor shall develop written instructions for all Contract Services functions, processes and procedures not already covered by written instructions. These shall be prepared and submitted to CMTA for review and approval.

17.12.14. The Contractor shall develop a Master List of all Contract Services (CDRL 17.12.14) functions, processes and procedures not already covered by written instructions as well as a proposed schedule for completion. This Master List shall be submitted to CMTA no later than 120 days after the Mobilization Commencement Date.

17.13. **Audits**

17.13.1. The Contractor shall prepare and implement an Audit Plan (CDRL 17.13.1) that encompasses all areas of Scope of Services. This shall be a separate, stand-alone plan that will be an adjunct to the QCPM. This plan shall be submitted to CMTA for review and approval no later than 120 days after NTP.

17.13.2. The Audit Plan shall identify minimum audit requirements for internal audits to be performed of all functional areas as well as Subcontractors and major suppliers. Emphasis shall be given to all areas directly impacting Customer Service, comfort and safety.

17.13.3. The Contractor shall provide copies of all audit reports and findings to CMTA within thirty (30) days of conclusion of the audit.

17.13.4. An Audit Summary Report (CDRL 17.13.4) shall be prepared and submitted to CMTA on a quarterly basis. The specific schedule for submission of these reports shall be included in the Audit Plan.

17.13.5. CMTA reserves the right to conduct its own audits of the Contractor or the Subcontractors and suppliers at any time. The Contractor shall fully cooperate and assist in such audits, as requested by CMTA.

17.13.6. The Contractor shall afford access to CMTA to inspect all Service Equipment to ensure that it is serviceable and properly stored, and may conduct spot inspections of Service

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Equipment, Support Property, and all Service Property for compliance with the requirements of this Contract.

17.13.7. The Contractor shall promptly address any CMTA quality assurance findings of ~~deficiencies, and~~deficiencies and shall conduct any additional training that may be required to remedy such deficiencies.

17.13.8. CMTA reserves the right to conduct quality assurance reviews of the Contractor's training, inspection, maintenance, and safety programs, as well as procedures, and documentation.

18. ASSET MANAGEMENT SYSTEM (AMS)

~~8.31.18.1.~~ After the consultation between CMTA and the Contractor, and in addition to any requirements of this Contract, the Contractor shall utilize the Asset Management System as follows:

18.1.1. The Contractor shall be required to utilize CMTA's asset management system to effectively record and manage all commuter rail system elements inclusive of vehicle, track, bridges, train control, signals and communications equipment maintenance activities. CMTA will provide the software to enable full functionality. CMTA will provide train-the-trainer type training to Contractor on the use of the system. Contractor is responsible for ensuring all maintenance employees are using the system appropriately and ensuring data integrity.

~~8.32.18.2.~~ ~~The Contractor will~~The Contractor shall be required to enter, at a minimum, the following items into the maintenance software system:

18.2.1. Work Orders (The Asset Maintenance Management system work order data entry must be completed by the mechanic or technician that performs the maintenance work.)

18.3. **Inventory**

~~Parts issues~~

18.3.1. Parts issues tracked by system type (Vehicle, train control, signals, communications, and civil infrastructure)

18.3.1.1. Fuel

18.3.1.2. Vehicle mileages or part age at time of replacement

18.3.1.3. Service calls

18.3.1.4. Any vehicle work history or activity pertaining to any CMTA assets inclusive of failure history and safety criticality of the failure

18.3.1.5. Labor hours

18.3.1.6. Preventive maintenance inspections by time, hours or miles

18.3.1.7. Any other type of inspections required by state or federal regulations

18.3.2. During the Contract period, CMTA shall have immediate and unrestricted access to all vehicles and all maintenance records during planned or unannounced visits or inspections of

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Contractor's facility. This includes total access to any electronic program or system(s), which maintain any records (present or historical) for CMTA assets supplied under the contract.

18.3.3. CMTA personnel shall have immediate and unrestricted access to all vehicles and all areas of the CMTA owned facilities. CMTA QA shall perform inspections and audits on contractor operated vehicles and equipment.

19. MATERIALS MANAGEMENT SERVICES

~~8.33.~~19.1. The Contractor shall provide all materials management services necessary to perform maintenance necessary for the performance of the maintenance of signals and communications, vehicles, track and bridges in this Contract.

~~8.34.~~19.2. CMTA shall provide storage facilities at the North Operations Rail Facility and storage yards at Cedar Park and Abbott Yard. The Contractor shall ensure that Property and Inventory are stored only in areas approved by CMTA, and under security appropriate for the nature of the materials.

~~8.35.~~19.3. The Contractor shall keep the material yards and any other storage facilities neat and in an orderly fashion at all times. All surplus materials or quantities above the minimum needed for routine maintenance shall be stored at the material yards unless otherwise approved by CMTA. The ~~contractor~~Contractor will utilize the CMTA Asset Management System to track all inventory,

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as well as tracking work orders. The ~~contractor~~Contractor will be responsible for procuring all additional materials and parts inventory for continuing operations.

~~8.36.19.4.~~ The Contractor shall obtain all material and parts for warranty repairs from suppliers without cost to CMTA.

~~8.37.19.5.~~ The Contractor shall prepare and maintain the data necessary to advance ~~claims,~~ ~~and~~claims and meet locally with vendors or contractors as CMTA requests. The Contractor shall use the CMTA Asset Management System to prepare and maintain data and claims.

~~8.38.19.6.~~ ~~The Contractor will~~The Contractor shall be assigned the existing parts inventory at the ~~time~~ ~~of service~~time-of-service commencement (**Exhibit J Attachment 20 – Parts Inventory**). CMTA will assign inventory parts for track, bridge, vehicles, signals and communications.

~~8.39.19.7.~~ Six (6) months prior to the ~~_~~expiration of the contract, the ~~contractor~~Contractor shall provide and ~~Capital Metro~~CMTA will verify a list of all of the parts and material in inventory.

~~8.40.19.8.~~ At the end of the contract, ~~Capital Metro~~CMTA reserves the right to purchase from the ~~contractor~~Contractor any or all of the inventory of parts and materials based on the number of items transferred to the ~~contractor~~Contractor at the beginning of the contract.

~~8.41.19.9.~~ ~~Capital Metro~~CMTA's purchase price shall be based on the Contractor's actual purchase cost(s) as verified with the supporting documentation acceptable to ~~Capital Metro~~CMTA and shall be payable within 60 days after the expiration of the contract.

~~8.42.19.10.~~ The Contractor shall ~~adequately~~ stock and procure replacement parts, supplies and materials for vehicles, track, bridges, signals and communications at sufficient levels to ensure that no reduction in service or system failure occurs because of low parts inventory.

~~19.10.19.11.~~ ~~At the close of the contract~~ CMTA reserves the right to purchase Contractor's DMU inventory, if desired, ~~at the value logged in CMTA's Asset Management System.~~

~~8.43.19.12.~~ The Contractor and CMTA will participate in an initial physical count of all Support inventory no later than ten (10) days prior to the Services Commencement Date.

~~8.44.19.13.~~ The Contractor shall manage the inventory using CMTA Asset Management System software.

~~8.45.19.14.~~ The shipping and receiving dock is the delivery point for CMTA business as well as for the Contractor. The ~~contractor~~Contractor is required to administer shipping and receiving tasks for CMTA.

19.15. Fuel and Fueling Procedures.

19.15.1. The Contractor shall monitor fuel supplies, reorder fuel, perform fuel reconciliations, monitor fuel deliveries, and provide regular reports of fuel use as required. CMTA will provide fuel at the fueling facility. All other fueling is the responsibility of the Contractor. Diesel fuel shall be ULSD. Contractor shall be responsible for the fluids and

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lubricants required for the vehicles. Only CMTA approved fluids, coolant, oils and lubricants are to be used.

19.15.2. Contractor and support personnel and vehicles will be required to fuel at the CMTA North Ops Facility. The Contractor is responsible for all offsite fuel.

19.15.3. CMTA will provide fuel for the DMUs. The Contractor shall manage delivery of fuel from CMTA's fuel vendor to CMTA's fuel storage facility at NorthOps and fuel the DMU from the fuel delivery system.

19.15.4. The Contractor shall have all DMUs fueled during the mid-day Service and Inspection Period and overnight Layover Period at the yard.

19.15.5. All liability associated with the receipt, storage and dispensing of fuel shall be the responsibility of the Contractor. The Contractor shall be responsible for all fueling record keeping necessary for reporting purposes.

19.15.6. The Contractor shall notify the Vice President of Rail Operations or designee immediately through email and telephone call if the following occurs:

~~8.45.1.1.19.15.6.1.~~ DMU runs out of fuel;

~~8.45.1.2.19.15.6.2.~~ DMU fuel tank with less than 20% of its capacity; or

~~8.45.1.3.19.15.6.3.~~ Fuel contamination

~~8.45.1.4.19.15.6.4.~~ Inspection Criteria and Condemning Limits

~~19.15.7.~~ ~~19.14.7~~ The Contractor shall develop and submit for approval to CMTA no later than ~~120 day~~ ~~120-day~~ NTP a fuel delivery procedure (CDRL ~~19.15.7~~ ~~19.14.7~~) that includes the following:

~~19.15.7.1.~~ ~~19.14.7.1~~ Ordering

~~19.15.7.2.~~ ~~19.14.7.2~~ Notification

~~19.15.7.3.~~ ~~19.14.7.3~~ Documentation

~~19.15.7.4.~~ ~~19.14.7.4~~ Acceptance

19.16. **Warranty Provisions**

~~19.16.8.~~ ~~19.16.1.~~ The Contractor shall not jeopardize any warranty covering any portion of the vehicle or property on the Central Subdivision. The Contractor shall comply with the terms and conditions of any manufacturer's maintenance and service schedules, except as otherwise modified by industry standards or otherwise explicitly directed in writing by CMTA. The Contractor is responsible for management of warranty compliance shall also be

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responsible for all maintenance performed under warranty. CMTA shall make reasonable effects to make available all such warranties.

~~19.16.9~~19.16.2. In addition, the Contractor shall make all repairs to the vehicles and equipment used on the Central Subdivision using the supplier's maintenance standards. In the event that the Contractor is found to be in violation of the maintenance standards, the Contractor shall correct the work at no additional cost to CMTA.

~~19.16.10~~19.16.3. Warranty Provisions for Non-conforming Work

~~19.16.11~~19.16.4. The Contractor shall aggressively administer warranties on behalf of CMTA. The Contractor shall conduct inspections, troubleshooting, and repair work in a manner to reveal identify where CMTA's warranties apply.

~~19.16.12~~19.16.5. The Contractor shall obtain all material and parts for warranty repairs from suppliers without cost to CMTA.

~~19.16.13~~19.16.6. The Contractor shall prepare and maintain the data necessary to advance ~~claims, and~~claims and meet locally with vendors or contractors as CMTA requests. The Contractor shall use the Asset Management System to prepare and maintain data and claims.

20. CONTRACTOR-FURNISHED VEHICLES

20.1. The contractor shall be responsible for the cost associated with the installation of the radio equipment into a new vehicle from an old vehicle. ~~Capital Metro~~CMTA will pay for the initial installation but not the subsequent installation. Training and certification of maintenance personnel for all vehicles shall be the responsibility of Contractor.

20.2. Radio System

~~20.2.8~~20.2.1. CMTA will furnish a radio system. A mobile radio will be assigned per vehicle. Mobile/handheld radios will be provided for supervisors and managers. Two consoles will be provided for contractor use at the North Ops dispatching facility. Replacement batteries, clips, microphones, receivers and other ancillary equipment shall be the responsibility of Contractor. Contractor shall replace any equipment lost or stolen at the market price. Contractor shall only use OEM parts. Contractor assumes the responsibility of all maintenance costs of the radio system associated with negligent or mishandling of

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equipment. The initial cost of radio installation for support vehicle will be at the cost of CMTA. Radio installation for vehicles that have been swapped are at the cost of the Contractor.

~~20.2.9-20.2.2.~~ CMTA will provide the ~~air time~~airtime required for the radio system to operate.

~~20.2.10-20.2.3.~~ ~~The Contractor will~~The Contractor shall supply all ~~Non-Revenue~~non-Revenue vehicles for field supervision, maintenance service calls, track, bridge, signal and communications maintenance use by contractor's staff.

~~20.2.11-20.2.4.~~ The Contractor shall be responsible for all maintenance, fueling, and repairs for these vehicles.

20.3. **Other Vehicles**

~~20.3.8-20.3.1.~~ The Contractor shall inspect provide maintenance, inspection and repair of hi-rail gear, OEM inspection and certification for five (5) CMTA owned hi-rail equipment.

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~~20.4.~~ ~~20.4~~—Support/Service Vehicles – Any charges for support/service vehicles will be fully amortized over the Base Period of the term of the contract and will not be charged again to CMTA should there be any contract modification for supplemental work.

21. **REGULATORY REQUIREMENTS**

21.1. The Contractor shall conduct its dispatching operations and maintenance in compliance with all applicable regulations, codes, laws, and rules which govern dispatching, operation and maintenance of a railroad in the U.S. These regulatory agencies include but are not limited to:

~~21.1.8-21.1.1.~~ American Public Transportation Association (APTA)

~~21.1.9-21.1.2.~~ American Railroad Engineering and Maintenance-of-Way Association (AREMA)

~~21.1.10-21.1.3.~~ Federal Railroad Association (FRA)

~~21.1.11-21.1.4.~~ Americans with Disabilities Act (ADA)

~~21.1.12-21.1.5.~~ Elderly & Handicapped regulations found in 49 CFR, Part 609

~~21.1.13-21.1.6.~~ Texas Department of Transportation (TxDOT)

~~21.1.14-21.1.7.~~ Environmental Protection Agency (EPA)

~~21.1.15-21.1.8.~~ Occupational Safety and Health Administration (OSHA)

~~21.1.16-21.1.9.~~ Federal Communications Commission (FCC)

~~21.1.17-21.1.10.~~ Texas Contractor's licensing codes

~~21.1.18-21.1.11.~~ Texas Commission of Environmental Quality (TCEQ)

~~21.1.19-21.1.12.~~ Texas Administrative Code

~~21.1.20-21.1.13.~~ Federal Transit Administration

~~21.1.21-21.1.14.~~ General Cod of Operating Rules (GCOR)

21.2. When any regulatory authority issues a defect, citation, violation, notification, ~~the contractor~~ ~~will~~ ~~the Contractor shall~~ make on the spot corrections, if possible but no later than thirty (30) days after defect was noted or submit an action plan to correct the defect.

21.3. The Contractor shall be financially responsible for any violations resulting in fines, additional penalties may also apply.

21.4. **FRA Compliance Management (FRA-CMP)**

~~21.4.8-21.4.1.~~ The Contractor shall prepare an FRA Compliance Management Plan (CDRL 21.4.1) that shall provide details on the following:

~~21.4.9-21.4.2.~~ How the Contractor maintains competency on all applicable regulations relating the service property, vehicles and equipment.

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~~21.4.10-21.4.3.~~ How inspection, testing and maintenance procedures are in compliance with FRA requirements.

~~21.4.11-21.4.4.~~ How the Contractor supervises the ~~work-force~~workforce to ensure the ~~work-force~~workforce is performing duties in compliance with regulatory requirements.

~~21.4.12-21.4.5.~~ How the Contractor trains employees in compliance with FRA requirements.

~~21.4.13-21.4.6.~~ How the Contractor documents the inspection, maintenance and employee requirements.

~~21.4.14-21.4.7.~~ How the Contractor manages record retention in compliance with FRA requirements.

~~21.4.15-21.4.8.~~ How the Contractor manages interface with the FRA.

~~21.4.16-21.4.9.~~ The FRA-CMP shall be submitted for CMTA review and approval within sixty (60) days after NTP. The Contractor shall comply with all requirements of the approved FRA-CMP.

22. **REPORTS**

22.1. By 7:00 AM CST each day, the Contractor shall submit a complete daily Transportation staffing report (CDRL 22.1) with CMTA detailing all assignments of engineers, dispatchers and supervisors for the prior and current day's service

22.2. By Monday morning weekly, the Contractor shall submit a complete weekly track outage report, maintenance production report/plan, and system wide service property inspection report (CDRL 22.2).

22.3. Daily Dispatcher Turnover report (~~3 per 24 hour period~~ Daily by 0700) (CDRL 22.3)

22.4. By the 10th day of each month or ten (10) days after receiving the necessary information from CMTA to produce the report for CDRL 22.4.9, the Contractor shall submit a complete monthly report to include the following:

~~22.4.8-22.4.1.~~ 22.4.1. ——— Supervisory track and right of way inspection report (CDRL ~~10.22.1.1~~140-22.4.1)

~~22.4.9-22.4.2.~~ 22.4.2. ——— FRA Test Compliance Report (CDRL 13.1)

~~22.4.10-22.4.3.~~ 22.4.3. Accident/Incident Report (CDRL 22.4.3)

~~22.4.11-22.4.4.~~ 22.4.4. Maintenance Report of vehicle, track, bridge, signals and communications (CDRL 22.4.4)

~~22.4.12-22.4.5.~~ 22.4.5. Maintenance Operation and Fleet Performance Report (CDRL 12.14.14)

~~22.4.13-22.4.6.~~ 22.4.6. MDBF Report (CDRL 16.9.5.4)

~~22.4.14-22.4.7.~~ 22.4.7. Training Schedule (CDRL 22.4.8)

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~~22.4.15~~22.4.8. NTD Monthly Report (CDRL 22.4.9)

~~22.4.16~~22.4.9. Customer Comment and Complaint Report (CDRL 15.5.8)

~~22.4.16.1~~20.1.8.1. The Contractor shall prepare and submit to monthly reports to CMTA detailing the number of customer comments and complaints, broken down by various

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categories determined by the Parties (provided, however, that the Contractor shall include all categories identified by CMTA).

22.5. By the 15th of January, April, July and October, the Contractor shall submit a complete quarterly report to include the following:

~~22.5.8-22.5.1.~~ ——— Organization Chart (CDRL 6.4.1)

~~22.5.9-22.5.2.~~ ——— Special Bridge Inspections (CDRL 22.5.2)

~~22.5.10-22.5.3.~~ Maintenance of Way Service Plan (CDRL 22.5.3)

~~22.5.11-22.5.4.~~ Safety Performance Report (CDRL 22.5.4)

~~22.5.12-22.5.5.~~ Security Issue & Incident Report (CDRL 5.9.3)

22.6. By the 20th of October, the Contractor shall submit a complete annual report to include the following:

~~22.6.8-22.6.1.~~ ——— Transportation Service Plan (CDRL 7.4)

~~22.6.9-22.6.2.~~ ——— On Time Performance Analysis Report (CDRL 22.6.2)

~~22.6.10-22.6.3.~~ Railroad Improvement Recommendation (CDRL 22.6.3) **Combine with CDRL 22.6.4 and CDRL 22.6.5 (single report)**

~~22.6.11-22.6.4.~~ Grade Crossing Improvement Plan (CDRL 22.6.4) **Combine with CDRL 22.6.3 and CDRL 22.6.5 (single report)**

~~22.6.12-22.6.5.~~ List of Flood Prone Locations and Mitigating Measures (CDRL 22.6.5) **Combine with CDRL 22.6.3 and CDRL 22.6.4 (single report)**

~~22.6.13-22.6.6.~~ By the 30th of November, the Contractor shall submit the necessary NTD Annual Reporting (CDRL 22.6.6)

22.7. By the 20th of August, the Contractor shall submit a complete annual report to include the following:

~~22.7.8-22.7.1.~~ ——— Bridge Maintenance Inspection Plan (CDRL 10.17.3.7)

~~22.7.9-22.7.2.~~ ——— Maintenance of Way Plan (CDRL 10.17.1)

~~22.7.10-22.7.3.~~ Rail Vehicle Maintenance Plan (CDRL 12.26.1)

~~22.7.11-22.7.4.~~ Signals and Communications Plan (CDRL 11.1)

~~22.7.12-22.7.5.~~ Culvert Maintenance & Inspection Plan (CDRL 10.17.3.9)

~~22.7.13-22.7.6.~~ Signal Failure Reduction Plan (CDRL 11.29)

~~22.7.14-22.7.7.~~ **Annual Fuel Usage Audit (CDRL 22.7.7)**

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22.8. By the 20th of March, the Contractor shall submit a complete annual report to include the following:

~~22.8.8-22.8.1.~~ Contractor License Review (CDRL 22.8.1)

~~22.8.9-22.8.2.~~ Contractor Safety Compliance Plan (CDRL 4.16)

~~22.8.10-22.8.3.~~ Contractor System Security Compliance Plan (CDRL 5.6.1)

~~22.8.11-22.8.4.~~ Emergency Preparedness Plan (CDRL 4.18.1)

~~22.8.12-22.8.5.~~ Emergency Response Plan (CDRL 4.16.1.13)

~~22.8.13-22.8.6.~~ Contingency Plan (CDRL 22.8.6)

~~22.8.14-22.8.7.~~ Drug Free Workplace Policy (CDRL 22.8.7)

~~22.8.15-22.8.8.~~ Drug & Alcohol Test Guidelines (CDRL 22.8.8)

~~22.8.16-22.8.9.~~ Contractor Annual Employee Training Plan (CDRL 13.2.1)

22.9. By the 15 of November or unless stated otherwise below, the Contractor shall deliver the following:

~~22.9.8-22.9.1.~~ Independent Audited (CDRL 22.9.1) Financial Statements for the time period October 1-September 30. (Due on the 30th of November)

~~22.9.9-22.9.2.~~ Incident Corrective Action Plan (CDRL 22.9.2) summarizing engineering responses taken and their effectiveness shall be included. In the event that any corrective actions are left open a ~~time line~~timeline for completion is expected to be included.

~~22.9.10-22.9.3.~~ If an investigation of the Service Disruption is ongoing at the time of submission of the report, the Final Incident/Accident Analysis Report (CDRL 22.9.3) shall also update CMTA on the status of the investigation. If the investigation is ongoing, this report shall include a timeline for completion of the investigation and the issuance of the final report. Report updates are required every 30 days thereafter. The Contractor shall submit a final report to CMTA that includes the baseline data and information listed above as well as a qualitative analysis that encompasses information obtained from the investigation. Upon completion of the investigation, the Contractor shall submit an updated Final Incident/Accident Report and Analysis to CMTA.

~~22.9.11-22.9.4.~~ At the request of CMTA, the Contractor shall meet to discuss any service disruption or incident.

~~22.9.12-22.9.5.~~ The Contractor shall produce "Delay Reports" containing detailed information describing the impact of all delays to customers on all affected trains. Delay Reports shall specify whether a freight or commuter rail train. Delay reports should also include the amount of time delayed at station location.

~~22.9.13-22.9.6.~~ The contractor shall provide annual inspection reports on safety and integrity (CDRL 22.9.6), including recommendations for any necessary repairs (minor and major). **as**

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well as a summary of all maintenance activities that have been performed during the previous year.

22.10. Signal Report (CDRL 22.10)

~~22.10.8.~~ 22.10.1. All required FRA reports shall be submitted in Asset Management System and PDF format to CMTA and available for review by the FRA.

~~22.10.9.~~ 22.10.2. Reports of all FRA tests required to be performed on the Service Property shall be submitted to CMTA on a monthly basis by the Contractor. The report shall include

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at minimum the location and rule or test number, the test due date, the completed date, test result, and corrective action(s), if necessary.

22.11. **Operating Rules Violation Report (CDRL 22.11)**

~~22.11.8~~~~22.11.1.~~ A verbal report shall be made immediate. A preliminary written report shall be provided to CMTA within twenty-four (24) hours of the reported operating rules violation.

~~22.11.9~~~~22.11.2.~~ The final report shall be submitted to CMTA within fifteen (15) days of the operating rules violation. The report shall be filed on Form FRA F6180-14.

22.12. **FRA Highway-Rail Grade Crossing Warning System Failure Report (CDRL 22.12)**

~~22.12.8~~~~22.12.1.~~ A verbal report will be made immediately. A preliminary written report shall be provided to CMTA within twenty-four (24) hours of the reported failure or violation.

~~22.12.9~~~~22.12.2.~~ The final report shall be submitted to CMTA within seven (7) days of the reported failure or violation. The report shall be filed on Form FRA 6180-83.

~~22.12.10~~~~22.12.3.~~ Contractor shall utilize, generate, and submit, in an agreed upon format, a Signal Call log on a daily basis to CMTA. The Contractor shall notify CMTA immediately after an incident has been recorded into the Signal Call log.

23. MOBILIZATION

23.1. Mobilization begins when the Contractor receives a Notice to Proceed from CMTA. The Contractor shall provide the Final Mobilization Plan will be 5 business days from NTP.

23.2. During Mobilization the Contractor shall prepare to transition all CMTA Commuter Rail Services operations and maintenance services and ensure that its employees are qualified and trained to assume their duties on the Services Commencement Date.

23.3. The Services Commencement Date is the date on which the Contractor assumes full responsibility for all CMTA Rail Services listed in this contract.

23.4. The current Contractor shall continue to perform operations and maintenance during the Mobilization Period and perform all other Contract Services in compliance with their Contract.

23.5. The Contractor shall prepare a Mobilization Plan that includes all the steps, activities, schedule and sequencing necessary for the Contractor to assume all operations and maintenance services by the Services Commencement Date in a planned and orderly fashion.

23.6. The Contractor's General Manager shall lead the Mobilization effort. Other Contractor personnel may be designated to assist the Mobilization effort in various functions defined by the Contractor.

23.7. The Contractor shall prepare and present a Mobilization organization structure as part of the Mobilization Plan. Each function required to ensure the success of the Mobilization Plan will be defined in the organization structure and an individual shall be assigned to perform the duties of each position. All responsibilities and reporting relationships must be clearly defined. CMTA will not approve any Plan that includes designations such as "TBD" in the organization structure

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unless arrangements are made with CMTA by the Contractor in advance of the beginning of the Mobilization period.

- 23.8. All Mobilization services that rely on the prior Contractor of the Commuter Rail Services or ~~Third-Party~~ Third-Party Contractors to be performed shall be identified and scheduled. Responsibility for each of these activities must be assigned to an individual on the Contractor's Mobilization team. In addition, each ~~Third-Party~~ Third-Party Contractor must be identified by name, address, activity performed, and other pertinent information.
- 23.9. The Contractor shall be prepared to address all FRA requirements. All plans, programs, testing and documentation must be included in the Mobilization Plan and accompanying schedule.
- 23.10. The Contractor shall designate responsibility for each part of the FRA requirements to specific individuals who will be in charge of the completion and submission of each task and document.
- 23.11. Each regulatory agency deliverable must be compiled on a spreadsheet including title of document or task; associated rule number, if applicable; date required; the Contractor employee responsible; FRA or other regulatory contact assigned responsibility; status; the Contractor completion date; date forwarded to FRA or other regulatory agency; date of FRA or other regulatory agency approval and included in the Mobilization Plan.
- 23.12. The Mobilization Plan must include provisions for completing any necessary training during Mobilization required in this Contract.
- 23.13. The Mobilization Plan must include a detailed schedule that identifies when each segment of Contract Services ~~are~~ is ready to be assumed by the Contractor. The schedule must identify key milestone dates for deliverables and other critical events, tasks and other objectives. The schedule shall also include the critical path for achieving each milestone deliverable. The Plan shall show the assumptions of responsibilities as soon as practicable.
- 23.14. The Mobilization Plan must include a concise list of underlying assumptions that support each deliverable. Every area of the Contract Services must be considered and addressed in the Mobilization Plan. CMTA will not approve a Plan that does not include all required elements of Contract Services.
- 23.15. The Contractor shall be responsible for completing the various work activities and submitting the designated CDRL items specified in other sections of this Contract within the Mobilization period.
- 23.16. To affect a smooth transfer, Mobilization may require the Contractor's managers and other employees to "shadow" the current Contractor's managers and employees performing their duties. The Contractor shall identify all anticipated overlapping roles in the Mobilization Plan and describe how this transition will be accomplished with minimum disruption to Commuter Rail Services
- 23.17. **Weekly Status Meetings**
- ~~23.17.8.~~ 23.17.1. During Mobilization, ~~the Contractor will~~ the Contractor shall schedule weekly meetings, at a minimum, with CMTA in order to review the progress of Mobilization and discuss any problems or anticipated problems. The Contractor shall submit a meeting

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schedule that covers the duration of the Mobilization period no later than NTP. These meetings will also review Contractor's progress with respect to staffing

~~23.17.9~~~~23.17.2.~~ The Contractor shall be prepared to report on the development status of each plan, schedule, program, system, guideline, manual, and form required under the terms of the Contract and in accordance with the CDRL schedule.

~~23.17.10~~~~23.17.3.~~ If CMTA requires changes to a plan, schedule, program, system, guideline, manual, the Contractor shall revise and re-submit it for CMTA's review and approval within the timeframe established by CMTA in the Contract.

~~25.24.~~ **DOCUMENTATION**

~~25.1~~~~24.1.~~ The Contract Data Requirements List (CDRL) is provided in **Exhibit F-1** of this Contract.

~~25.2~~~~24.2.~~ The Contractor shall prepare a spreadsheet listing each of these documents, their due dates and frequency of submittal. The spreadsheet (CDRL 24.2) shall include all documents used to enable data entry into the Asset Management System. This spreadsheet shall be delivered to CMTA for final review and approval no later than 5 business days from NTP.

~~25.3~~~~24.3.~~ This report shall be part of the agenda of the Weekly Status Meetings described in Weekly Status Meetings of Mobilization. The Contractor shall cite the CDRL number of each document and document template and due date.

~~25.4~~~~24.4.~~ **Miscellaneous**

~~25.4.8~~~~24.4.1.~~ The Contractor shall properly store, update and provide to Contractor Personnel all CMTA-approved maintenance manuals and procedures.

~~25.4.9~~~~24.4.2.~~ The Contractor shall provide a detailed description of how maintenance manuals and procedures will be stored, updated and made available to Contractor Personnel.

~~25.4.10~~~~24.4.3.~~ The Contractor shall interface maintenance procedures with a work order system to ensure that the proper procedures are applied in the performance of the work.

~~25.4.11~~~~24.4.4.~~ The Contractor shall identify a process for revising maintenance procedures and providing instruction to employees regarding the revision(s) in compliance with the Quality

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Control Plan. This process shall include, a provision outlining the development process for maintenance procedures in order to maintain a high level of procedure quality.

~~25.4.12.24.4.5.~~ The Contractor shall be responsible for maintaining all maintenance procedures with the most current changes and revisions issued by the OEMs.

~~25.4.13.24.4.6.~~ The Contractor shall make formal notification of changes to all maintenance Contractor Personnel and CMTA. All relevant documents shall be updated to reflect changes as necessary.

~~25.5.24.5.~~ **Corrective Maintenance – Component Failure**

~~25.5.8.24.5.1.~~ The Contractor shall implement a maintenance approach that will assure that components are replaced in advance of the point of failure due to normal wear-and-tear to the greatest extent possible.

~~25.5.9.24.5.2.~~ Corrective maintenance shall be performed in a timely manner. Corrective maintenance shall be performed, as required, to ensure system and sub system availability and shall not be deferred.

~~25.5.10.24.5.3.~~ The Contractor shall maintain sufficient resources to address corrective maintenance.

~~25.5.11.24.5.4.~~ Corrective maintenance resulting from defective components supplied by a vendor are the Contractor's sole responsibility. The Contractor shall assure that material, parts, components and systems are purchased from reputable sources of supply and procured using the appropriate specifications.

~~25.5.12.24.5.5.~~ The Contractor shall inform CMTA in writing, immediately, of cases where vendor defective components have caused failures and when available, document the findings of an investigative inspection and the corrective actions necessary. This shall be supported by the Quality Assurance Program required by this contract.

~~25.6.24.6.~~ **Corrective Maintenance – Damaged Infrastructure, Systems, and Vehicles**

~~25.6.8.24.6.1.~~ The Contractor is responsible to for all damage to the service property, infrastructure and equipment by acts of God, weather, vandalism, incidents, accidents, trespassers, debris strikes etc..

~~25.6.9.24.6.2.~~ CMTA will reimburse the contractor for any work that exceeds \$25,000 per incident per location (within 2500 feet) in accordance with Exhibit E 6 of this contract. The contractor is financially responsible for the cost of making these repairs for an amount not to exceed \$25,000 per incident. The contractor will be responsible at its cost to repair any damage to the rail track, the DMU vehicles, and ancillary equipment (e.g. signal houses, crossing gates, signage) up to the amount of \$25,000 per incident caused by the following events: vandalism, trespassers, debris strikes, washouts, floods, wind events, tornadoes, hurricanes, birds strikes, animals, and motor vehicle collisions that damage the track, signal gates, or signage. For amounts exceeding \$25,000 Capital Metro will pay the dollar difference upon invoice and proper supporting documentation.

~~25.6.10.24.6.3.~~ The contractor shall provide repairs associated with the conditions above to the service property and infrastructure inclusive of labor (overtime), material and equipment.

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Under no circumstances will the contractor submit additional costs for equipment or personnel included in the base contract.

~~25.6.11.24.6.4.~~ The Contractor is responsible for presenting CMTA an incident report providing a description of the circumstances that caused the damage, the extent of the damage and cost estimate to complete these repairs within one (1) Business Day of the event causing the damage or discovery of damage. Exceptions for one Business Day turnaround for estimates shall be granted on a case-by-case basis.

~~25.6.12.24.6.5.~~ The Contractor shall provide evidence that the damage is due to acts of God, weather, vandalism by unauthorized third parties or trespassers, right of way accidents or incidents caused by unauthorized third parties or trespassers and debris strikes caused by unauthorized third parties or trespassers.

~~25.6.13.24.6.6.~~ Work to repair or replace components that are damaged due to acts of God, weather, –vandalism, right of way accidents or incidents, and debris strikes shall not commence until CMTA supplies written authorization for the Contractor to proceed.

26.25. POSITIVE TRAIN CONTROL OPERATIONS AND MAINTENANCE (Effective 10/1/2022)

~~25.1.~~ CMTA ~~is committed to meeting to the requirements of 49 CFR 236 subpart I and will be installing~~ has installed a Positive Train Control (“PTC”) system to support the entire Commuter Rail System. ~~The PTC Project will be designed, built, installed~~ in accordance with the requirements of 49 CFR 236. This system is active and is incorporated into CMTA’s Signal, Train Control and tested through an Agreement with a PTC System ~~Communications system inclusive of its on-board system components.~~

~~25.2.~~ The Contractor. ~~CMTA~~ shall managemaintain the ~~Contract~~ PTC network, including associated networking hardware, software, and configurations in accordance with ~~the PTC Contractor through a dedicated CMTA project team.~~ CMTA, OEM, regulatory requirements and industry best practices. This includes troubleshooting, repair, component replacements ~~component replacements (including retired, discontinued, and obsolete products), network security, and network monitoring.~~

~~26.1.25.2.1.~~ The Contractor shall ~~coordinate and cooperate with the PTC Contractor.~~ support the VITAL (Hirschman) network at a Tier 1 level. CMTA personnel shall assume responsibility for Tier 2 and Tier 3 support.

~~25.2.2.~~ The Contract shall support NON-VITAL (Cisco) network at a Tier 1 and Tier 2 levels. CMTA assumes responsibility for Tier 3 support.

~~26.2.25.3.~~ The Contractor shall provide ~~any access upon a schedule requested by the~~ Tier 1 support for vital and non-vital PTC Contractors provided that such access that does not unreasonably interfere with switches along the ROW and in the Contract Services. Any access requested by the PTC Contractors that is deemed to be unreasonable by the stations. The Contractor may be over-ruled by CMTA. ~~shall be responsible for first response and initial evaluation and report and escalate to CMTA as necessary following initial evaluation.~~

~~26.3.~~ ~~Roadway Worker Protection Training~~ ~~In addition to its Roadway Worker Protection (“RWP”) training obligations provided by Training of Contractor Personnel of this Contract, the Contractor shall provide RWP training for the PTC Contractors for up to 20 people per~~

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~~year. This training shall be provided at the commencement of the PTC Contractors' agreement with CMTA.~~

~~26.4. PTC System Operation and Maintenance~~

~~26.4.8. The requirements for operation and maintenance for the PTC system have yet to be defined. Once these requirements are known, CMTA shall prepare a scope of work for this additional service that shall form the basis for a Service Change as set forth in Changes of this contract. This service will be added by contract modification.~~

~~26.4.9. The operation and maintenance of the PTC system will be treated by both CMTA and the Contractor as a Service Change in conformance with the terms and conditions of this Contract.~~

25.4. Unless otherwise specified in Section 25, the Contractor shall operate and maintain this system consistent with all other Signal, Train Control and Communications system and vehicle requirements and in accordance with the Contractor's PTC Operations and Maintenance Program Plan (CDRL 25.4). The program plan shall at a minimum include a catalog of all Operations and Maintenance Manuals – to be provided by CMTA, relevant documents specified in CMTA's PTCDP and PTCSP in accordance with 49 CFR §236.1039, CMTA's configuration management plan, PTC training plans which should include up-to-date training records, and plans for complying with FRA operational restrictions under 49 U.S.C. §236.567 and/or 236.1029 for enroute failures.

25.5. Per 49 CFR §236.586 and 587, the Contractor shall perform the PTC Departure Test procedure on every PTC equipped train prior to its departure from the maintenance facility, once every 24 hours. Document the result of every Departure test using the PTC departure test forms developed by CMTA and a copy shall be deposited in CMTA's approved document database system, SharePoint.

25.6. The Contractor shall perform departure test verification, and No Code Proceed (NCP) counter number verification prior to each train entering PTC-equipped territory. This information shall be reported to the Dispatcher who shall then record the information on the Dispatcher's Rail Incident Report. The Contractor shall make sure no PTC-equipped train enters the main without passing its departure test.

25.7. The Contractor shall document enroute failures such as PTC brake enforcements and other PTC anomalies on the PTC Incident Report at the end of each Train Operator's shift.

25.8. Following any initialization or departure test failure, unusual events, incidents involving PTC, the Contractor shall perform DMU UCII equipment log download, Teloc event log download

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or ElectrologIXS event log download. These downloads shall be provided to CMTA within 24 hours of an event or incident.

25.9. In accordance with 49 CFR §236.1039, the Contractor shall have all PTC manuals made readily available to persons required to perform tasks, and for inspection by CMTA, FRA, and FRA-certified state inspection.

25.10. The Contractor shall be responsible for carrying out the following tests which shall be performed in accordance with the OEM recommendations and regulatory requirements.

25.5.1 Daily Departure Test for Onboard Equipment. The Contractor shall perform this test daily on all commuter cars before entering PTC territory, in accordance with 49 CFR §236.587. Results shall be posted in the train cab, filed in the office, and uploaded to CMTA document database or as required. This test shall be performed through the onboard Engineering Display Unit (EDU), no test equipment is required.

25.5.2 Periodic Test for UCII Onboard equipment. The Contractor shall perform the following test every 90 days per the UCII Service Manual, as required by 49 CFR §236.588. It includes the following:

- Visual Inspection
- System Isolation Test
- System Voltage Test
- No Code Proceed Counter (NCP) Operations
- Cutout Operation
- Locate System Ground
- Wheel Diameter Calibration
- Set Date and Time
- Cab Signal Pickup Test
- Time to Penalty (TTP) Verification and Audible Alares (Speed Generator)

The Contractor shall utilize a cab signal generator and test loop for these tests and shall utilize the test form in section 3 of the UCII Service Manual.

25.11. The Contractor shall provide periodic refresher training and evaluation at the following intervals for its personnel, as follows: dispatcher – 1 year; train operator – 3 years; signal personnel

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– 3 years; mechanical personnel – 3 years; first line supervisor – 3 years. A copy of the training records shall be provided to CMTA or made available as part of the audit.

25.12. The Contractor shall assist CMTA with PTC related investigation and provide an annual PTC State of Good Repair/Observational report (CDRL 25.7) no later than November 1st of every year.

25.13. The Contractor shall work with CMTA personnel to assist in the support of PTC functionality contained within the dispatch system software, (i.e., “PTC Back Office”). The Contractor shall report PTC Back Office issues to CMTA personnel, track PTC Back Office anomalies, and collaborating with CMTA and its vendor to rectify anomalies in a timely manner.

25.14. CMTA will provide an initial spare parts inventory. Thereafter the Contractor is responsible for purchasing spare parts (reimbursed by CMTA through PTC Materials/Parts allowance with no mark-up) and ensuring there is sufficient quantity of spare parts on hand to meet availability requirements. For any PTC parts not funded by CMTA, CMTA reserves the right to purchase back PTC spare parts, if desired, at the purchase price entered into the asset management system at the end of the contract term. If not purchased by CMTA, the Contractor shall make the spare parts available to the next contractor at the original purchase price. The contractor shall advise CMTA of selected additional PTC spare parts equal to the spare part allowance within six (6) months of NTP for approval and shall maintain maintenance documentation surrounding defective parts replaced by the purchased spare parts.

NOTE: The contractor is to understand that any work not specifically mentioned in the scope, but which is necessary, either directly or indirectly, for the proper carrying out of the intent thereof, shall be required and applied, and the ~~contractor~~Contractor shall perform all such work just as if it were particularly defined or described. Unless specifically mentioned above, all work shall conform to ~~the~~OEM, FRA, and CMTA standards and requirements and other industry recommendations, best practices and standards ~~of CMTA~~.