



CONTRACT NO. 200002
State Legislative Consulting Services
(RFP 133345)

CONTRACTOR: K&L Gates LLP
Jack Erskine, Administrative Partner/Project Manager
2801 Via Fortuna – STE 350
Austin, TX 78746

AWARD DATE: October 19, 2015

AWARD AMOUNT: \$254,000.00

CONTRACT TERM: December 1, 2015 through November 30, 2017

PROJECT MANAGER: Christy Willhite
512-369-6027
christy.willhite@capmetro.org

CONTRACT ADMINISTRATOR: Anita Deibert
512-369-7755
anita.deibert@capmetro.org

PROCUREMENT DEPARTMENT
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
2910 E. 5th STREET
AUSTIN, TEXAS 78702

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**State Legislative Consulting Services
CONTRACT # 200002
(RFP #133345)**

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**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AUSTIN, TEXAS**

AWARD/CONTRACT FORM

1. SOLICITATION NO: 133345 2. CONTRACT NO.: 200002 3. EFFECTIVE DATE: UPON EXECUTION

4. CONTRACTS ADMINISTRATOR : Anita Deibert, CPSM PHONE: 512-369-7755

5. SHIP TO ADDRESS: 6. DELIVERY TERMS:
Capital Metro
2910 East 5th Street
Austin, Texas 78702 F.O.B. Destination

7. DISCOUNTS FOR PROMPT PAYMENT:

8. CONTRACTOR NAME & ADDRESS: 9. REMITTANCE ADDRESS: (If different from Item 8)
K&L Gates LLP
2801 Via Fortuna, Suite 350
Austin, TX 78746

PHONE: 512-482-6800 FAX: EMAIL: JACK.ERSKINE@KLGATES.COM

10. SBE GOAL: NONE

CONTRACT EXECUTION

CAUTION : A false statement in any bid or proposal submitted to CMTA may be a criminal offense in violation of Section 37.10 of the Texas Penal Code.

NEGOTIATED AGREEMENT: (Contractor is required to sign below and return to the Contracting Officer within five (5) calendar days of receipt.)

Contractor agrees to perform, furnish and deliver all the services set forth or otherwise identified in Contractor's Proposal dated August 10, 2015, Exhibit A (Pricing Schedule), Exhibit E-Revised-1 (Contractual Terms and Conditions), Exhibit F (Scope of Services) and all relevant attachments and addenda for the base and option years. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this Award/Contract, (b) the solicitation, as amended, and (c), such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein.

SIGNATURE OF CONTRACTOR:

Name/Title: Jack Erskine Signature: Jack Erskine Date: 10/16/15

AWARD: Items listed below are changes made to Exhibit E which come from Contractor's Proposal.

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

ALTERATIONS IN CONTRACT:

Refer to Exhibit E. Exhibit E shall be replaced in its entirety with Exhibit E-Revised-1, attached hereto and made a part hereof for all pertinent purposes. Section 36 has been revised, as shown in highlighted text.

11. ACCEPTED AS TO:

Exhibit A dated 8/10/15, Section 6 - PRICING Base Period 1 (Year 1 and 2 of the Contract), Items 1 and 2.


SIGNATURE OF CONTRACTING OFFICER:

Typed Name: Muhammad Abdullah, Procurement Director Signature: Muhammad Abdullah Date: 11/04/2015

**EXHIBIT A
SCHEDULE
RFP 133345**

THE OFFEROR IS REQUIRED TO SIGN AND DATE EACH PAGE OF THIS SCHEDULE

1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT:

| | | | |
|--|---|----------------|--------------------------|
| Company Name (Printed) | K&L Gates LLP | | |
| Address | 2801 Via Fortuna, Suite 350 | | |
| City, State, Zip | Austin, TX 78746 | | |
| Phone, Fax, Email | (512) 482-6800 | (512) 482-6859 | jack.erskine@klgates.com |
| The undersigned agrees, if this offer is accepted within the period specified, to furnish any or all supplies and/or services specified in the Schedule at the prices offered therein. | | | |
| Authorized Agent Name and Title (Printed) | Jack M. Erskine | | |
| Signature and Date |  | | August 10, 2015 |

2. ACKNOWLEDGEMENT OF AMENDMENTS:

The offeror acknowledges receipt of the following amendment(s) to this solicitation (give number and date of each).

| Amendment # | Date | Amendment # | Date |
|---|------|-------------|-----------|
| Addendum (Clarification - SBE's) | | | 7/27/2015 |
| Addendum (133345 Schedule C SBE Forms - Fillable) | | | 7/27/2015 |
| | | | |

3. PROMPT PAYMENT DISCOUNT:

| # Days | Percentage | % |
|--------|------------|---|
| | | |

Note, payment terms are specified in Exhibit E, Contractual Terms and Conditions.

4. AUTHORITY'S ACCEPTANCE (TO BE COMPLETED UPON AWARD BY CAPITAL METRO):

The Authority hereby accepts this offer.

| | | | |
|--|--|--|--|
| Authorized Agent Name and Title (Printed) | | | |
| Signature and Date | | | |
| Accepted as to: | | | |

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
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:

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:

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. 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, 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.

5. 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 |
|-------------------|---|
| Larry McGinnis | July 7, 2015. Seek clarification with Ms. Anita Deibert regarding SBE goals, the procedure for completing Section A of Exhibit G, and how to address "costs" in Volume 2, Tab B(ii), relating to projects of similar size, scope, and complexity. |
| Larry McGinnis | July 24, 2015. Seek clarification with Ms. Anita Deibert on the permission to use client reports in the RFP response. |

(Attach continuation form, if necessary.)

6. 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.

7. 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 includ-

ing 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.

8. 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, continuation, 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.

9. 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.

10. 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 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:

K&L Gates LLP

Type/Print Name of Signatory:

Jack M. Erskine

Signature:



Date:

August 10, 2015

EXHIBIT E-Revised-1
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. FIRM FIXED PRICE CONTRACT

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

3. TERM

The term of the contract shall be two (2) years from the date of the 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 three (3) option periods. Each option period shall be for a two (2) year duration.

(d) The total term of this contract shall not exceed eight (8) 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 shall not exceed 6

months. The Authority may exercise 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.

(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.**

(4) Professional Liability Coverage: Professional Liability Insurance covering negligent acts, errors and omissions arising from the Contractor's work to pay damages for which the Contractor may become legally obligated. Minimum limits of liability shall be not less than One Million Dollars and No/100 Dollars (\$1,000,000) on an annual aggregate basis.

(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 insurance, waive all rights of recovery or subrogation against the Authority and the Authority's insurance companies.

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

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

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

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

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

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

contract. Certificate of Insurance must indicate the contract number and description. The insurance certificate should be mailed to the attention of the buyer who made the request.

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

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

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

Contractor represents that contractor has established a criminal background policy that complies with guidance issued by the U.S. Equal Employment Opportunity Commission and that contractor conducts criminal background checks on its employees 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 the contractor to disclose any criminal record for assigned personnel and the right to disapprove the use of assigned personnel with criminal records.

13. BADGES AND ACCESS CONTROL DEVICES

(a) Each contractor employee 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 employee loses or misplaces their badge, contractor will be charged a \$50.00 replacement fee for each lost or misplaced badge. This fee will be deducted from the contractor invoice. If contractor fails to return all badges provided for their employees upon completion of the contract or termination of the contractor's employee, 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 Manager to the Manager of Security or Project Manager of Security

(b) Access Control Devices will be issued to contractor employees as necessary to perform the duties specified in the contract. Access Control Devices are not transferable between contractor employees. Contractor employees 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 fails to return all Access Control Devices provided for their employees upon completion of the contract or termination of the contractor's employee replacement cost shall be calculated at current market value to include labor and materials. Replacement key costs shall be deducted from the 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.

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 em-

bargoes, and unusually severe weather; provided, however, in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor and if such default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Authority, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority (i) any completed supplies and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Authority, protect and preserve property in possession of the Contractor in which the Authority has an interest. Payment for completed supplies delivered to and accepted by the Authority shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Authority and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the Authority. Failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the disputes clause of this contract. The Authority may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Authority determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.

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

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

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

16. TERMINATION FOR CONVENIENCE

The Authority may, whenever the interests of the Authority so require, terminate this contract, in whole or in part, for the convenience of the Authority. The Authority shall give written no-

tice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

(a) The Contractor shall incur no further obligations in connection with the terminated work, and, on the date set forth in the notice of termination, the Contractor will stop work to the extent specified. The Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Authority may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Authority. The Contractor must still complete the work not terminated by the notice of termination and may incur such obligations as are necessary to do so.

(b) The Authority may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority: (i) any completed supplies; and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The Contractor shall, upon direction of the Authority, protect and preserve property in the possession of the Contractor in which the Authority has an interest. If the Authority does not exercise this right, the Contractor shall use its best efforts to sell such supplies and manufacturing materials.

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

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

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

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

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

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

17. CONTRACTOR CERTIFICATION

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

18. DRAWINGS AND OTHER DATA

All designs, drawings, specifications, notes, documents, reports, data, graphs, and other works developed in the performance of this contract shall become the sole property of the Authority and may be used in any manner by the Authority and without additional compensation to the Contractor. The Authority shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights or establish any claim under the design patent or copyright laws. The Contractor, for a period of three (3) years after completion of the project, agrees to retain all works developed in the performance of the contract and to furnish all retained works to the Authority upon the Authority's request. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

19. STANDARDS OF PERFORMANCE

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

20. INSPECTIONS AND APPROVALS

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

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

(c) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made avail-

able 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 suspended or delayed by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

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

22. FEDERAL, STATE AND LOCAL TAXES

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

23. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. Offeror shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, promotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall retain and make available to the Authority records showing compliance with this Section and with Section 38, Examination and Retention of Records, for three (3) years after completion of a project, or until an audit is completed and all questions, claims, disputes, negotiations, and other actions arising therefrom are resolved, whichever occurs last. Additional retention periods may be required as appropriate and stipulated in writing.

24. CONFLICT OF INTEREST

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

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

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

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

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

25. GRATUITIES

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

tracts, 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.

31. 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

~~The Contractor, and the Contractor's subcontractors and suppliers shall defend, indemnify and save harmless the Authority, its officers, agents and employees from and against all suits, actions or claims of any character, name or description (including the cost, expenses and reasonable attorney's fees) brought for or on account of any injuries or damages (including death) received or sustained by any person or property on account of or arising out of, or in connection with, any acts or omissions of the Contractor or any subcontractor or anyone directly or indirectly employed by or under the supervision of them in the performance of this Contract, and shall in all ways hold the Authority, its officers, agents and employees harmless from any such claims, losses or damages.~~

Contractor shall indemnify the Authority for only that portion of any liability that is caused by any negligent error, or negligent act or omission by Contractor with regard to the legal work it has done for the Authority hereunder, as such liability is finally determined after trial and any appeal thereof. If Contractor is alleged to have any liability for a shared or joint negligent error, act or omission of Contractor and the Authority, Contractor's indemnification obligation to the Authority shall be apportioned on a comparative fault basis, and Contractor shall not be re

quired to indemnify the Authority for any amount in excess of Contractor's own comparative fault causing actual damages as finally determined after trial and any appeal thereof. This article shall not nullify, extend, or expand any statute of limitations that is otherwise applicable to any professional negligence claim against Contractor. This provision is not intended to, and does not, alter or interfere with any duties that Contractor may have under its insurance agreements, such as the duty to cooperate fully with the insurer in defending any claims, the duty to obtain the consent of the insurer to pay or compromise any claim, or the duty to refrain from prejudicing the insurer's subrogation rights. This provision is solely for the benefit of the Authority and no third party beneficiary or other rights shall be created under this provision. In the event a claim or lawsuit is brought against the Authority alleging the Authority's responsibility relating to alleged negligence of Contractor, and if the Authority requests that Contractor defend the Authority or pay for the Authority's defense in regard to the claim or lawsuit, Contractor agrees to consider in good faith such a request. If Contractor does not agree to defend the Authority in the claim or lawsuit but Contractor is ultimately found liable in a lawsuit for any negligent error, act or omission by Contractor with regard to the legal work Contractor has performed for the Authority, then Contractor shall reimburse the Authority for the portion of the Authority's defense costs that are attributable to the negligent error, act or omission of Contractor and the associated damages established against the Authority.

37. MAINTENANCE OF RECORDS

All associated records required by this contract or by law shall be maintained 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.

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 from the date of any final settlement.

(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. 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 clarifications within the two week

period shall constitute a waiver by Contractor of all of its rights to further protest.

45. TOBACCO FREE WORKPLACE

(a) Definitions:

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

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

(b) Policy:

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

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

(i) Protecting employees and visitors from second hand smoke

(ii) Encouraging tobacco users to quit tobacco use

(iii) Lowering health plan costs

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

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

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

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

46. ORDER OF PRECEDENCE

In the event of any inconsistency between the provisions of the solicitation (including any resulting contract), the inconsistency shall be resolved by giving precedence in the following order: (1) the Schedule; (2) Solicitation Instructions and

Conditions; (3) Contractual Terms and Conditions; (4) other provisions of the contract whether incorporated by reference or otherwise; and (5) the specifications or statement of work.

47. GOVERNING LAW

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

48. ORGANIZATIONAL CONFLICT OF INTEREST (OCI)

(a) This contract, in whole or in part, provides for the Contractor to provide State Legislative Consulting Services Further, 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 in support of State Legislative Consulting Services. 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" means the contractor, its subsidiaries and affiliates, joint ventures involving the contractor, any entity with which the contractor may hereafter merge or affiliate and any other successor or assignee of the 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.

49. 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.

**EXHIBIT F
SCOPE OF SERVICES**

1. BACKGROUND

Capital Metropolitan Transportation Authority (“Capital Metro” or “the Authority”) is a public agency responsible for providing mass transit service within the City of Austin and the surrounding communities of Leander, Lago Vista, Jonestown, Manor, San Leanna, Volente, and Point Venture, as well as the unincorporated area of Travis County within Commissioner Precinct 2 and the Anderson Mill area of Williamson County. Capital Metro services include bus, ride-share programs, special event services, and special transit services for the mobility impaired.

2. DESCRIPTION

The Authority is seeking proposals from qualified and experienced firms to provide State Legislative Consulting Services, which will include the interpretation of State statutes. The Authority desires to work with a team of professionals with demonstrated ability to advance a legislative agenda. The successful team must include at least one licensed attorney and will be expected to provide strategic advice to the Authority on state legislative matters; and advise and assist the Authority in developing and maintaining constructive relations and providing continuous communications with members of the State Legislature and other relevant entities to promote and protect the interests of the Authority.

3. PRIMARY WORK TASKS

Primary responsibilities shall include:

(a) Advising and assisting the Authority in **maintaining constructive relations** with the Texas State Legislature to promote and protect the interests of the Authority. Special emphasis shall be placed on relations with the Central Texas area House and Senate Delegation (herein referred to as the "Delegation"), as well as with other Members and staff of key legislative committees and any other key Members and staff of the Legislature as necessary.

(b) Assisting the Authority by **providing continuous communications** with members of the State Legislature. Special emphasis shall be placed on communications with the Delegation and their staff, as well as with other Members and staff of key legislative committees and any other key Members and staff of the Legislature as necessary.

To fulfill these responsibilities, the Contractor shall:

(a) Regularly inform the aforementioned legislators and staff of the Authority's activities.

(b) Regularly advise the Authority of the interests and needs of the Delegation and any other key Members and staff.

(c) Coordinate briefings with the Delegation and other key Members and staff on the Authority's progress and new activities. As part of this coordination, the Contractor shall be responsible for arranging the schedule and locations of the briefings. The Contractor will be responsible for arranging at least two briefings per year.

(d) Assist the Authority with the development of informational and briefing materials for distribution to the Members of the Legislature and staff on a regular basis detailing the Authority's progress and new activities.

The Contractor will also be required to:

(a) Advise upon and assist with the development of a legislative agenda and a strategic communication plan to advance said legislative agenda prior to the beginning of each session.

(b) Advise upon and assist with the development of the Authority's position on specific legislation.

(c) Comment on, and advise upon and assist with the development of legislative drafts and bill language.

(d) Solicit support for, including legislative sponsorship of, the Authority's initiatives from Members of the Legislature.

(e) Monitor and report upon activities undertaken by the Legislature that affect the Authority or other public transportation authorities, including in the House and Senate transportation committees, budget committees, interim committees, and any other relevant committees, subcommittees, and select committees. To fulfill this responsibility, the Contractor shall attend relevant meetings and hearings of the Legislature and its committees, utilize subscribed services, and seek other information sources.

(f) Prepare the Authority for participation in legislative hearings by coordinating and assisting with the development of testimony.

(g) Serve as a resource to the Authority regarding questions and issues related to State transportation matters such as statutes, regulations, programs, and procedures that affect the Authority. To help fulfill this responsibility, the Contractor shall:

(1) Provide information on legislation, hearings, regulations, and other relevant State matters as requested or when appropriate.

(2) Maintain and furnish copies of legislation of interest when such is introduced, requested, or as appropriate; and assemble and furnish any relevant background information and information about the status of such legislation.

(3) Maintain regular communication with designated Authority staff, keeping them aware of action on key legislation and any other relevant activity, and involving them in the legislative process. For example, during a legislative session, at least daily communications may be required and during non-Session periods, communication at least weekly may be required. Throughout the term of the contract, communication will occur on an as needed basis to be determined by the Authority.

4. OTHER WORK TASKS

The Contractor will also be required to perform the following work tasks as needed:

(a) Liaising with the Texas Department of Transportation and any other necessary state agency.

(b) Assisting the Authority with forming coalitions to promote the interests of the Authority by liaising with other government relations consultants and staff at entities such as Dallas Area Rapid Transit (DART), the Metropolitan Transit Authority of Harris County (Houston METRO), VIA Metropolitan Transit (San Antonio), the Texas Transit Association, and any other entities as mutually determined to be appropriate.

(c) Performing other duties and responsibilities as assigned and defined from time to time that relate to the advancement of the Authority's agenda at the State level.

5. WRITTEN REPORTS

Additionally, the Contractor shall:

(a) Provide the following written reports to communicate the status of State affairs:

(1) At the end of every month, the Contractor shall provide a report that includes an overview of all meetings and discussions held on the Authority's behalf, and the status of any changing political and regulatory issues that may affect the Authority.

(2) By March 31 of every year, the Contractor shall provide an annual report that includes a strategic plan with timelines that delineate major initiatives and recommendations to the Authority to improve results at the end of each calendar year.

(3) Prepare information necessary to fully comply with all regulations and laws in the State of Texas regarding government relations and lobby activities.