CONTRACT 200223
VISION SERVICES
(RFP 302979)

CONTRACTOR: EyeMed Vision Care
4000 Luxottica Place
Mason, Ohio 45040

Phone: 513-765-3305
Fax: 513-492-3305
E-Mail: kollila@eyemed.com

AWARD DATE: October 9, 2017

CONTRACT TERM: January 1, 2018 through December 31, 2020

PRICE: $78,646.68 for the 3-year base period

PROJECT MANAGER: Mary Gerik
512-369-6287
mary.gerik@capmetro.org

CONTRACT ADMINISTRATOR: Tracee Metterle
512-369-6525
tracee.metterle@capmetro.org
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CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AUSTIN, TEXAS

AWARD/CONTRACT FORM

1. SOLICITATION NO: 302979
2. CONTRACT NO: 200223
3. EFFECTIVE DATE: January 1, 2018

4. CONTRACTS ADMINISTRATOR: Tracee Metterie
   PHONE: 512-399-6525

5. SHIP TO ADDRESS:
   Capital Metro
   2910 East 5th Street
   Austin, Texas 78702

6. DELIVERY TERMS:
   F.O.B. Destination

7. DISCOUNTS FOR PROMPT PAYMENT:

8. CONTRACTOR NAME & ADDRESS:
   EyeMed Vision Care
   4000 Luxottica Place
   Mason, Ohio 45040

9. REMITTANCE ADDRESS: (If different from Item 8)
   PHONE: 513-765-3305
   EMAIL: koliga@eyemed.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.

X NEGOTIATED AGREEMENT: (Contractor is required to sign below and return to the Contracting Officer within three (3) calendar days of receipt.)

Contractor agrees to perform, furnish and deliver all the services set forth or otherwise identified in Exhibit A, Revised-1 (Pricing Schedule), Exhibit E-Revised-1 (Contractual Terms and Conditions), Exhibit F-Revised-1 (Scope of Services), Contractor's Final Proposal Revision dated July 5, 2017, Contractor's Initial Proposal dated May 26, 2017, 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: V.P Finance  Signature: [Signature]  Date: 10/10/17

X AWARD: Items listed below are changes from the original offer and solicitation as submitted.

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:

1. 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 3, Term has been revised as noted in highlighted text with a line in the margin.

2. Refer to Exhibit F. Exhibit F shall be replaced in its entirety with Exhibit F-Revised-1, attached hereto and made a part hereof for all pertinent purposes. Section 4 has been corrected to be Section 5 as noted in highlighted text with a line in the margin.

11. ACCEPTED AS TO: Exhibit A, Revised-1 Pricing Schedule, Section 7.1, Item 3, for an Annual Price of $78,646.68.

SIGNATURE OF CONTRACTING OFFICER:

Muhammad Abdullah,
Typed Name: Contracting Officer  Signature: [Signature]  Date: 10/30/2017
1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT

<table>
<thead>
<tr>
<th>Company Name (Printed)</th>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>4000 Luxottica Place</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>City, State, Zip</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mason, Ohio 45040</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Phone, Fax, Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>513.765.3305 phone</td>
</tr>
<tr>
<td>513.492.3305 fax</td>
</tr>
<tr>
<td><a href="mailto:kolila@eyemed.com">kolila@eyemed.com</a></td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Authorized Agent Name and Title (Printed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brian Haiges, VP Finance &amp; Asst Secretary</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signature and Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/6/17</td>
</tr>
</tbody>
</table>

2. ACKNOWLEDGEMENT OF AMENDMENTS

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

<table>
<thead>
<tr>
<th>Amendment #</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>6/29/2017</td>
</tr>
</tbody>
</table>

3. PROMPT PAYMENT DISCOUNT

<table>
<thead>
<tr>
<th># of Days</th>
<th>Not applicable.</th>
<th>Percentage</th>
<th>Not applicable. %</th>
</tr>
</thead>
</table>

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

4. SBE GOAL (TO BE COMPLETED UPON AWARD BY CAPITAL METRO)

The SBE participation commitment for this contract is the following percentage of the total contract:

| N/A |

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

The Authority hereby accepts this offer.

<table>
<thead>
<tr>
<th>Authorized Agent Name and Title (Printed)</th>
</tr>
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<tbody>
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<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signature and Date</th>
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</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

Accepted as to:

Signature of Authorized Agent: ______________________        Dated: ______________________

RFP 302979 Form A-1 (7/11/14) 1 of 7

Amendment # 1  Exhibit A, Revised-1
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
      X □ Another entity ______

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

2. PARENT COMPANY AND IDENTIFYING DATA
   (a) The offeror (mark one):
      X □ is
      □ is not

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.

We're part of the Luxottica family of companies and 100% owned by Luxottica Retail North America.
Corporate Headquarters
4000 Luxottica Place, Mason, OH 45040
(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 with and the persons approved by, the persons identified in this solicitation. Discussions with any other person not specified could result in disclosure of proprietary or otherwise 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:

<table>
<thead>
<tr>
<th>Individual’s Name</th>
<th>Date/Subject of Communication</th>
</tr>
</thead>
<tbody>
<tr>
<td>As the current vision carrier, Account Manager</td>
<td></td>
</tr>
<tr>
<td>Kellie Ollila has periodic interaction with Authority benefit administrators specifically regarding their current vision benefit.</td>
<td></td>
</tr>
</tbody>
</table>

(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
   [X] 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 discredititable 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 admin-
istation 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.

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 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.
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(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:
EyeMed Vision Care, LLC

Type/Print Name of Signatory:
Brian Haigis

Signature:

Date:
5/26/2017
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 three (3) years, beginning January 1, 2018 through December 31, 2020 from the contract award date. 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-option periods for a twelve (12) month duration each.

(d) The total term of this contract shall not exceed five (5) 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, electronically to: AP_invoices@capmetro.org or via mail 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 Capital Metro-stipulated insurance requirements specified below. All insurance policies shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to the Authority and shall contain a contract waiver of subrogation in favor of the Authority. Contractor shall furnish to the Authority certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Prior to the expiration of a certificate of insurance, a new certificate of insurance shall be furnished to the Authority showing continued coverage. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to the Authority and the Authority shall be named as an Additional Insured under each policy, excluding Professional Liability insurance. All insurance policies shall be written by reputable insurance company or companies acceptable to the Authority with a current Best’s Insurance Guide Rating of A+ and Class XIII or better. All insurance companies shall be authorized to transact business in the State of Texas. Contractor shall notify the Authority in writing of any material alteration of such policies, including any change in the retroactive date in any “claims-made” policy or substantial reduction of aggregate limits, if such limits apply or cancellation thereof at least thirty (30) days prior thereto. The below requirements only represent the minimum coverage acceptable to the Authority and these requirements are not intended to
represents the maximum risk or the maximum liability of Contractor. Contractor shall be responsible for setting its own insurance 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.

The Contractor shall carry and pay the premiums for insurance of the types and in the amounts stated below:

**CAPITAL METRO MINIMUM COVERAGE REQUIREMENTS**

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 including Products Liability.

Automobile Liability Insurance with minimum coverage limits of not less than One Million Dollars and No/100 Dollars ($1,000,000) with combined single limit of liability, covering all owned, hired and non-owned automobiles used in connection with work for Bodily Injury and Property Damage.

Workers’ Compensation Insurance providing statutory limits in accordance with the Texas Workers’ Compensation Act and/or other State or Federal law as may be applicable to the work being performed under this contract.

Employer Liability Insurance with minimum limits of One Million Dollars and No/100 Dollars ($1,000,000).

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.

The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.

Contractor, and all of its insurers shall, in regard to the above stated insurance, agree to waive all rights of recovery or subrogation against the Authority, its directors, officers, employees, agents, successors and assigns, and the Authority’s insurance companies arising out of any claims for injury(ies) or damages resulting from the work performed by or on behalf of Contractor under this contract and/or use of any Authority premises or equipment under this contract.

Each insurance policy shall contain the following endorsements: PRIMARY AND NON-CONTIBUTORY INSURANCE and WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS, which shall be evidenced on the Certificate of Insurance. The General Liability insurance shall include contractual endorsement(s) which acknowledge all indemnification requirements under the Agreement, which shall be evidenced on the Certificate of Insurance. 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.

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.

If any part of the contract is sublet, Contractor shall be liable for its 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. No delay in the work caused by the Contractor’s enforcement of its Subcontractor’s insurance requirements shall be excusable delay in the contract. 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.

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.

If the Contractor has procured insurance at the time of the Contractor’s submission of its 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 Contracting Officer.

The Contractor and its lower tier Subcontractors are required to cooperate with the Authority and report all potential claims (workers’ compensation, general liability and automobile liability) pertaining to this contract, to the Authority’s Risk Management Department at (512) 389-7549 within two (2) days of the incident.

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

(1) State Criminal History: Contractor shall re-search criminal history, including driving records (where applicable), 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.

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

Contractor shall disclose the type of offense to the Authority according to the timetable below:

<table>
<thead>
<tr>
<th>Offense Type</th>
<th>Action Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crimes Against the Person (other than sex crimes)</td>
<td></td>
</tr>
<tr>
<td>Felony</td>
<td>Submit to Capital Metro for review if less than 10 years from date of release from confinement</td>
</tr>
<tr>
<td>Class A or B Misdemeanor</td>
<td>Submit to Capital Metro for review if less than 7 years from date of conviction</td>
</tr>
<tr>
<td>Class C Misdemeanor</td>
<td>Submit to Capital Metro for review if less than 5 years from date of conviction</td>
</tr>
<tr>
<td>Crimes Against the Person - Sex Crimes</td>
<td></td>
</tr>
<tr>
<td>ALL</td>
<td>Submit to Capital Metro for review</td>
</tr>
<tr>
<td>Crimes Against Property</td>
<td></td>
</tr>
<tr>
<td>Felony</td>
<td>Submit to Capital Metro for review if less than 10 years from date of release from confinement</td>
</tr>
<tr>
<td>Moral Crimes, including, but not limited to: Drug Crimes, Prostitution, Bigamy, Illegal Gambling, Child Pornography</td>
<td></td>
</tr>
<tr>
<td>Felony</td>
<td>Submit to Capital Metro for review if less than 10 years from date of release from confinement</td>
</tr>
<tr>
<td>Class A or B Misdemeanor</td>
<td>Submit to Capital Metro for review if less than 7 years from date of conviction</td>
</tr>
</tbody>
</table>
Contractor may not assign an employee to provide Services if the employee has any conviction in the applicable categories listed above, unless an exception is granted by the Authority in accordance with subsection (d).

(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.

At the time a request is made for an individual assessment, contractor must include the following documentation:

- the candidate’s application/resume;
- a copy of the criminal conviction history, including those tried in a military tribunal;
- available court information related to the conviction;
- any publicly available information related to the offense and conviction;
- 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
- a statement from the candidate explaining why the person is an acceptable risk for the work to be performed by the candidate.

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

(e) Contractor will periodically conduct 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.

### 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) Offers 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, 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

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

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Authority, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority (i) any completed supplies and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Authority, protect and preserve property in possession of the Contractor in which the Authority has an interest. Payment for completed supplies delivered to and accepted by the Authority shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Authority and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the Authority. Failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the disputes clause of this contract. The Authority may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Authority determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.
(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be those provided in the Termination for the Convenience of the Authority Clause hereof. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the disputes clause of this contract.

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

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

16. TERMINATION FOR CONVENIENCE

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

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

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

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

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

(2) costs incurred in preparing 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 thereunder, 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 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**

(a) Equal Opportunity Clause. During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) Federally assisted construction contracts. The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is provided for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, and such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(c) Subcontracts. Each nonexempt prime Contractor or Subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

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, non-performance, 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 assigns; 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 shall immediately 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. INDEMNIFICATION

(a) Contractor will indemnify, defend and hold the Authority and its officers, directors, employees, agents and representatives (the Authority and each such person or entity is an "Indemnified Party") harmless from and against any and all damages (as defined herein) directly or indirectly resulting from, relating to, arising out of or attributable to any of the following:

(i) any breach of any representation or warranty that Contractor has made in this contract;

(ii) any breach, violation or default by or through Contractor or any of its Subcontractors of any obligation of Contractor in this contract or any other agreement between Contractor and the Authority;

____________________________________________________________________________
(iii) the use, condition, operation or maintenance of any property, vehicle, facility or other asset of the Authority to which Contractor has access or as to which the Contractor provides services; or

(iv) any act or omission of the Contractor or any of its Subcontractors or any of their officers, directors, employees, agents, customers, invitees, representatives or vendors.

“Damages” means all direct or indirect damages, losses, liabilities, deficiencies, settlements, claims, awards, interest, penalties, judgments, fines, or other costs or expenses of any kind or nature whatsoever, whether known or unknown, contingent or vested, matured or unmatured, and whether or not resulting from third-party claims, including costs (including, without limitation, reasonable fees and expenses of attorneys, other professional advisors and expert witnesses) related to any investigation, action, suit, arbitration, appeal, claim, demand, inquiry, complaint, mediation, investigation or similar event, occurrence or proceeding.

(b) If any Action is commenced or threatened that may give rise to a claim for indemnification (a “Claim”) by any Indemnified Party against the Contractor, then such Indemnified Party will promptly give notice to the Contractor after such Indemnified Party becomes aware of such Claim. Failure to notify the Contractor will not relieve the Contractor of any liability that it may have to the Indemnified Party, except to the extent that the defense of such Action is materially and irrevocably prejudiced by the Indemnified Party’s failure to give such notice. The Contractor will assume and thereafter diligently and continuously conduct the defense of a Claim with counsel that is satisfactory to the Indemnified Party. The Indemnified Party will have the right, at its own expense, to participate in the defense of a Claim without relieving the Contractor of any obligation described above. In no event will Contractor approve the entry of any judgment or enter into any settlement with respect to any Claim without the Indemnified Party’s prior written approval, which will not be unreasonably withheld. Until the Contractor assumes the diligent defense of a Claim, the Indemnified Party may defend against a Claim in any manner the Indemnified Party reasonably deems appropriate. The Contractor will reimburse the Indemnified Party promptly and periodically for the Damages relating to defending against a Claim and will pay promptly the Indemnified Party for any Damages the Indemnified Party may suffer relating to a Claim.

(c) This Section will survive any termination or expiration of this contract.

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 –

(i) the subcontracted supplies or services were obtainable from other sources;  
(ii) The Authority ordered the Contractor in writing to purchase these supplies or services from the other source; and  
(iii) 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

The periodic 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 Pricing 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 percent (10%) 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 percent (110%) or below 90 percent (90%) 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, in whole or in part, provides for the Contractor to provide Vision 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 Vision 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.

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.
1. **BACKGROUND**

(a) 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, 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.

(b) The vision plan will be 100% employee-paid.

(c) Capital Metro currently has one vision plan. As a company funded by tax dollars, it is important to manage the vision plans closely but also provide a competitive and quality benefit to our employees.

(d) An important aspect of controlling future increases is through wellness initiatives. It is extremely important to Capital Metro to understand the current expenses and to model programs under the wellness program to target diseases that help reduce expenses or proactively prevent them.

2. **OBJECTIVE**

(a) Capital Metropolitan Transportation Authority (Capital Metro or the Authority) is seeking proposals to solicit benefit plan coverage or administration for a vision plan. The project includes payments and/or reimbursement of benefit expenses according to the vision coverage. This company will be required to provide education to Capital Metro management on vision care trends and provide cost analysis, reporting, customer service, online access for members and Capital Metro administrator, network discounts, integration with Human Resource Information Systems - UltiPro and other processes as documented in this scope.

(b) Capital Metro currently has these services provided by a single vendor that subcontracts different components of the administration.

3. Capital Metro is asking that the vendor perform the following tasks:

   (1) Develop a schedule and implementation plan.

   (2) Train staff in administration of eligibility and troubleshooting claims issues.

   (3) Migrate existing benefit plan data as required to your system.

   (4) Review the Capital Metro contract template and identify areas that your company may need to have adjusted.

   (5) Provide detail of services available based on the requirements of this scope of work required by Capital Metro.

4. **PROJECT GOALS**

Capital Metro expects to achieve the following goals:

(a) **Business Goals**

   (1) Provide Plan Documents and Summary Plan Descriptions updated as required by federal mandates.

   (2) Provide claims administration that accurately processes payment according to the Plan document with predetermined guarantees.

   (3) Provide timely processing within predetermined guarantees.

   (4) Maintain accurate reporting for cost projections and trend analysis.

   (5) Provide Network discounts for services provided to majority of participants to reduce the overall plan costs.

   (6) Be ready to have new plans available to employees on September 1, 2017 with an effective date of January 1, 2018.

   (7) Provide education for management and participants on benefit utilization.

   (8) Plan is to be administered based on regulatory guidelines issued by IRS under the Plan Document. This plan is not an ERISA plan but should operate under the ERISA regulations.

   (9) Assist Capital Metro management in developing strategies to maintain competitive benefits.

(b) **Technical Goals**

   (1) Provide a web based system that accepts electronic reporting from Capital Metro’s HRIS system (UltiPro) for participant eligibility including new hire enrollment, annual open enrollment, and family status changes.
(2) Please provide copies of current communications and website information.

(3) Provide participants access to the status of claims processing and forms needed to complete the processing.

(4) Provide Benefit Plan coverage eligibility and verification to participants and providers electronically and verbally.

(5) Provide facsimile phone number as well as secure email process for claim processing.

(6) Customer Service assistance by phone with preferably 24 hour access but will accept normal work hours.

(7) Accept electronic claims processing from providers.

### 4-5. SCOPE OF SERVICES

The successful vendor(s) will be expected to work with key stakeholders, be aware of existing Capital Metro benefit plans and technology, and determine how best to implement the programs to obtain the Authority’s stated goals.

(a) Existing Vision Benefit:

<table>
<thead>
<tr>
<th>Vision Benefits</th>
<th>Network Coverage</th>
<th>Out of Network Reimbursement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Vision Exam</strong> (with dilation as necessary)</td>
<td>$10 co-pay Every 12 months Up to $40</td>
<td>Up to $45 N/A</td>
</tr>
<tr>
<td>Standard contact lens fit and follow-up</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Prescription Glasses Lenses</strong></td>
<td>$15 co-pay</td>
<td>Up to $45 Up to $65 Up to $85</td>
</tr>
<tr>
<td>- Single vision</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Lined bifocal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Lined trifocal lenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Prescription Glasses Frames</strong></td>
<td>Your choice of frame covered up to $150, plus 20% off any out-of-pocket costs over $150 Every 24 months</td>
<td>Up to $75</td>
</tr>
<tr>
<td><strong>Contacts</strong></td>
<td>When you choose contacts instead of glasses, $120 allowance, plus 15% off retail price over $120. Every 12 months</td>
<td>Up to $120</td>
</tr>
</tbody>
</table>

(b) Vision Coverage

(1) Capital Metropolitan Transportation Authority currently has 303 employees eligible and 245 (Employee Only 117, Employee Spouse/Employee Plus One 54, Employee Family 74) participating in the vision plan currently. All 2017 claims will be processed by the current provider but will need to be transitioned to the new contractor if the current contractor is not selected. The company will be required to provide education to Capital Metro management on vision care trends and provide cost analysis, reporting, customer service, online access for members and Capital Metro Administrator, network discounts, integration with Human Resource Information Systems and other processes.

(c) Requirements-Fully Insured Vision Plans

(1) Capital Metro would like to maintain the same vision plan design for employees.

(2) The cost analysis will itemize all expenses to include the expected claims cost, administration fees, mailing expenses that will be used to develop the premiums.

6. CAPITAL METRO RESPONSIBILITIES

(a) Provide a project manager who will act as primary point of contact.

(b) Allow the contractor the necessary access to the census data and three years of claims experience, plan documents, and Capital Metro staff members.

(c) Facilitate with contractor in setting up required meetings and interviews.

(d) Provide a project steering committee for guidance and necessary decision-making.

7. CONTRACTOR/VENDOR RESPONSIBILITIES

(a) Provide a single point of contact for all communication regarding work under this contract.

(b) Coordinate all tasks with the Capital Metro project manager.

(c) Produce detailed deliverable documentation to support completion status of each project deliverable. Provide sample in proposal.

(d) If needed, be available to provide the project steering committee with regular updates, at least weekly, which will include high-level status of the project as well as any critical risk factors that may affect the project schedule or other success factors.

(e) Meet biweekly with the Capital Metro project manager and project team members to discuss progress, risk factors that may affect the project schedule and issues that arise during the course of the project.
(f) Provide guidance and training material, including administration manuals, to Capital Metro staff for necessary setup steps of product.

(g) Coordinate with Capital Metro’s Wellness Contractor to meet healthy promotion and disease prevention goals.

8. **FIRM AND STAFF QUALIFICATIONS**

(a) The firm must have five (5) or more years of extensive experience administering vision plans as fully insured or self insured.

(b) Vendor must provide three (3) client references (include clients that closely mirror the size, geographic diversification, and plan complexity of Capital Metro’s account). Included company name, appropriate contact person, address, telephone number, group size, number of years under contract.

(c) Each staff member assigned to the project by the firm must have been involved in a minimum of three (3) successful conversions of vision plans. Applicable references will be required.

(d) Capital Metro reserves the right to disapprove any person any vendor appoints to the project based on the person’s experience and past performances.

(e) Provide information regarding the three (3) most recent client terminations: company name, appropriate contact person, address, telephone number, group size, number of years under contract, reason for termination.

9. **PROJECT WORK PLAN AND TIMELINE**

(a) Vendor will submit a proposed work plan and timeline.

(b) After the contract is awarded, the vendor and Capital Metro project manager will work together to finalize the work plan and timeline.

10. **PROJECT DOCUMENTATION**

(a) Vendor will be responsible for documenting all phases of this project and will provide Capital Metro with copies of all notes, schedules, and any other prepared documents.

(b) Documentation will be provided in electronic format where possible, preferably in the Microsoft Office Suite format (Word, Excel, PowerPoint, Project).

11. **PROPOSAL SCOPE OF SERVICES**

(a) Prospective vendor should provide a response as to whether their proposed services completely provide each feature described in the Attachment 1, Compliance Document. Please follow the instructions as outlined in each section of the compliance document.