CONTRACT 200323
(RFP 304067)
RIDESHARE CONTRACTED SERVICES

CONTRACTOR: EAN Holdings, LLC
4210 S. Congress Ave
Austin, Texas 78745
Phone: 512-912-0332
Howard.b.zaroff@ehi.com

AWARD DATE: October 4, 2018

CONTRACT TERM: Notice to Proceed through December 31, 2021

PRICE: ESTIMATED NOT-TO-EXCEED $13,851,120.00

PROJECT MANAGER: Tammy Quinn
512-389-7430
tammy.quinn@capmetro.org

CONTRACT ADMINISTRATOR: Kimberley Craft
512-389-7579
kimberley.craft@capmetro.org
CONTRACT #200323
RFP #304067

TABLE OF CONTENTS

RIDESHARE CONTRACTED SERVICES

The entire contract shall consist of the cover page, the table of contents and all the documents listed on the table of contents

<table>
<thead>
<tr>
<th>EXHIBIT</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>AWARD/CONTRACT FORM</td>
</tr>
<tr>
<td>A-REVISED-2</td>
<td>PRICING SCHEDULE</td>
</tr>
<tr>
<td>B</td>
<td>REPRESENTATIONS AND CERTIFICATIONS</td>
</tr>
<tr>
<td>E-REVISED-3</td>
<td>CONTRACTUAL TERMS AND CONDITIONS</td>
</tr>
<tr>
<td>F-REVISED-3</td>
<td>SCOPE OF SERVICES</td>
</tr>
<tr>
<td>ATTACHMENT 1</td>
<td>MONTHLY REPORT TEMPLATE</td>
</tr>
<tr>
<td>ATTACHMENT 2</td>
<td>SERVICE AREA MAP</td>
</tr>
<tr>
<td>ATTACHMENT 3</td>
<td>VEHICLE DATA BASE</td>
</tr>
<tr>
<td></td>
<td>AMENDMENT # 1 DATED JUNE 11, 2018</td>
</tr>
<tr>
<td></td>
<td>AMENDMENT # 2 DATED AUGUST 24, 2018</td>
</tr>
<tr>
<td></td>
<td>AMENDMENT # 3 DATED AUGUST 30, 2018</td>
</tr>
<tr>
<td></td>
<td>CONTRACTOR’S FINAL PROPOSAL REVISION (FPR)</td>
</tr>
<tr>
<td></td>
<td>DATED AUGUST 31, 2018</td>
</tr>
<tr>
<td></td>
<td>CONTRACTOR’S INITIAL PROPOSAL DATED JUNE 12, 2018</td>
</tr>
</tbody>
</table>
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AUSTIN, TEXAS

AWARD/CONTRACT

1. SOLICITATION NO: 304067

2. CONTRACT NO.: 200323

3. EFFECTIVE DATE: UPON EXECUTION

4. BUYER
   NAME: Kimberley Craft
   PHONE: (512) 389-7579

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

6. DELIVERY TERMS:
   FOB Destination

7. DISCOUNTS FOR PROMPT PAYMENT: None

8. CONTRACTOR NAME & ADDRESS:
   EAN Holdings, LLC
   4210 S. Congress Ave
   Austin, TX 78745
   PHONE: (512) 912-3332
   FAX: (512) 682-3864

9. REMITTANCE ADDRESS: (if different from Item 8)

10. DBE 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 an original document to the Contracting Officer within five (5) calendar days of receipt.)

Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified below and on any continuation sheets for the consideration stated herein. 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 pricing schedule, and (c), such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein.

SIGNATURE OF CONTRACTOR:

Name/Title: Howard Zaroff, Vice President/General Manager
Signature: [Signature]
Date: 10/15/18

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:

Refer to Exhibit E Revised - 2, Contractual Terms and Conditions. Exhibit -E Revised - 2 shall be replaced in its entirety with Exhibit E-Revised-3, Contractual Terms and Conditions attached hereto and made a part hereof for all pertinent purposes. Changes in the document are reflected with highlighted text and a line in the margin. Refer to Section 3, Term.

Refer to Exhibit F-Revised-2, Scope of Services. Exhibit -F-Revised-2 shall be replaced in its entirety with Exhibit F-Revised-3, Scope of Services attached hereto and made a part hereof for all pertinent purposes. Changes in the document are reflected with highlighted text and a line in the margin. Refer to Section 4, Transition Plan.

ACCEPTED AS TO: Exhibit A-Revised-2, Base Periods 1 through 3, inclusive: Sections 6A, Items 1 through 20; Section 6B, Items 1 through 20; and Section 6C, Items 1 through 20.

SIGNATURE OF CONTRACTING OFFICER:

Typed Name: Muhammad Abdullah, C.P.M.
Contracting Officer
Signature: [Signature]
Date: 01/16/18
EXHIBIT A-Revised-2
1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT

<table>
<thead>
<tr>
<th>Company Name (Printed)</th>
<th>EAN Holdings, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>4210 S Congress Ave</td>
</tr>
<tr>
<td>City, State, Zip</td>
<td>Austin, TX 78745</td>
</tr>
<tr>
<td>Phone, Fax, Email</td>
<td>512-912-0332, 512-692-3864, <a href="mailto:howard.b.zaroff@ehi.com">howard.b.zaroff@ehi.com</a></td>
</tr>
<tr>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>Authorized Agent Name and Title (Printed)</td>
<td>Howard Zaroff - Vice President/General Manager</td>
</tr>
<tr>
<td>Signature and Date</td>
<td>8-31-18</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>6/11/2018</td>
</tr>
<tr>
<td>2</td>
<td>8/24/2018</td>
</tr>
<tr>
<td>3</td>
<td>8/30/2018</td>
</tr>
</tbody>
</table>

3. PROMPT PAYMENT DISCOUNT

<table>
<thead>
<tr>
<th># of Days</th>
<th>N/A</th>
<th>Percentage</th>
<th>N/A</th>
<th>%</th>
</tr>
</thead>
</table>

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

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

The Authority hereby accepts this offer.

| Authorized Agent Name and Title (Printed) | Muhammad Abdullah, C.P.M., Procurement Director |
| Signature and Date                      |                                               |
| Accepted as to:                         | All Items specified in Exhibit A-Revised-2, Base Periods 1 through 3, inclusive: Section 6A, Items 1 through 20; Section 6B, Items 1 through 20; and Section 6C, Items 1 through 20. |
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
EXHIBIT B
REPRESENTATIONS AND CERTIFICATIONS
(LOCALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)
MUST BE RETURNED WITH THE OFFER

1. TYPE OF BUSINESS
   (a) The offeror operates as (mark one):
      □ An individual
      □ A partnership
      □ A sole proprietor
      □ A corporation
      ☑ Another entity Limited Liability Company
   (b) If incorporated, under the laws of the State of:
      Delaware

2. PARENT COMPANY AND IDENTIFYING DATA
   (a) The offeror (mark one):
      ☑ is
      □ is not
      owned or controlled by a parent company. A parent company is one that owns or controls the activities and basic
      business policies of the offeror. To own the offering company means that the parent company must own more than
      fifty percent (50%) of the voting rights in that company.
      (b) A company may control an offeror as a parent even though not meeting the requirements for such ownership
      if the company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of domi-
      nant minority voting rights, use of proxy voting, or otherwise.
      (c) If not owned or controlled by a parent company, the offeror shall insert its own EIN (Employer’s Identification
      Number) below:
      N/A
      (d) If the offeror is owned or controlled by a parent company, it shall enter the name, main office and EIN number
      of the parent company, below:
      [Redacted]
3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(a) The offeror (and all joint venture members, if the offer is submitted by a joint venture) certifies 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.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory:

(1) is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(i) has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision ________. [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) as an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and

(iii) as an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

4. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

(a) In accordance with the provisions of 2 C.F.R. (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 judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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

(4) have not within a three (3) year period preceding this offer had one or more public transactions (Federal, State, or local) terminated for cause or default.
(b) Where the offeror is unable to certify to any of the statements above, the offeror shall attach a full explanation to this offer.

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

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

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

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

5. COMMUNICATIONS

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

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

<table>
<thead>
<tr>
<th>Individual's Name</th>
<th>Date/Subject of Communication</th>
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</table>

6. CONTINGENT FEE

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

☐ has  ☒ has not

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

☐ has  ☒ has not

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

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

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

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

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


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 at $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 re-
ceived, 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’s 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 discreditble acts;
(13) communicate details of any active Capital Metro procurement or solicitation to any contractor, potential contractor or individual not authorized to receive information regarding the active procurement;

(14) No Board Member or employee shall:

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

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

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

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

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

(f) Disclosure of Conflict of Interest Requirements:

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

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

(ii) Prior to the vote or decision, the Board Member or Employee shall file an affidavit relating to the interest in the business, contract or real property with the Board Vice Chair or Capital Metro’s 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 Capital Metro's 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 Texas Local Government Code, § 176.006, a "Vendor" is required to file a conflict of interest questionnaire within seven (7) 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. TEXAS ETHICS COMMISSION CERTIFICATION

In accordance with Section 2252.908, Texas Government Code, upon request of the Authority, the selected contractor may be required to electronically submit a "Certificate of Interested Parties" with the Texas Ethics Commission in the form required by the Texas Ethics Commission, and furnish the Authority with the original signed and notarized document prior to the time the Authority signs the contract. The form can be found at www.ethics.state.tx.us. Questions regarding the form should be directed to the Texas Ethics Commission.

9. TEXAS LABOR CODE CERTIFICATION (CONSTRUCTION ONLY)

Contractor certifies that Contractor will provide workers' compensation insurance coverage on every employee of the Contractor employed on the Project. Contractor shall require that each Subcontractor employed on the Project provide workers' compensation insurance coverage on every employee of the Subcontractor employed on the Project and certify coverage to Contractor as required by Section 406.98 of the Texas Labor Code, and submit the Subcontractor's certificate to the Authority prior to the time the Subcontractor performs any work on the Project.

10. CERTIFICATION REGARDING ISRAEL

In accordance with Section 2270.002 of the Texas Government Code, the Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

11. CERTIFICATION OF PRIME CONTRACTOR PARTICIPATION

(a) The Prime Contractor certifies that it shall perform no less than thirty (30%) of the work with its own organization. The on-site production of materials produced by other than the Prime Contractor's forces shall be considered as being subcontracted.

(b) The organization of the specifications into divisions, sections, articles, and the arrangement and titles of the project drawings shall not control the Prime Contractor in dividing the work among subcontractors or in establishing the extent of the work to be performed by any trade.

(c) The offeror further certifies that no more than seventy percent (70%) of the work will be done by subcontractors.

12. 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.

(e) I understand that a false statement on this certification may be grounds for rejection of this submittal or termination of the awarded contract.

Name of Offeror:

Type/Print Name of Signatory:
Howard Zaroff, Vice President and General Manager

Signature:

Date:
June 13, 2018
EXHIBIT E-Revised-2
1. **DEFINITIONS**

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

(a) “Applicable Anti-Corruption and Bribery Laws” means international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the Contractor’s provision of goods and/or services to Authority, including without limitation “FCPA” or any applicable laws and regulations, including in the jurisdiction in which the Contractor operates and/or manufactures goods for the Authority, relating to anti-corruption and bribery.

(b) “Authority,” “Capital Metro,” “Cap Metro,” “CMTA” means Capital Metropolitan Transportation Authority.

(c) “Change Order” means a written order to the Contractor signed by the Contracting Officer, issued after execution of the Contract, authorizing a change in the term or scope of the Contract.

(d) “Contract” or “Contract Documents” means this written agreement between the parties comprised of all the documents listed in the Table of Contents, Change Orders and/or Contract Modifications that may be entered into by the parties.

(e) “Contract Award Date” means the date of the Contract award notice, which may take the form of a purchase order, signed Contract or Notice of Award, issued by the Authority.

(f) “Contract Modification” means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.

(g) “Contract Sum” means the total compensation payable to the Contractor for performing the Services as originally contracted for or as subsequently adjusted by Contract Modification.

(h) “Contract Term” means period of performance set forth in the paragraph entitled “Term” contained in Exhibit E.

(i) “Contracting Officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and finding on behalf of the Authority. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(j) “Contractor” means the entity that has assumed the legal obligation to perform the Services as identified in the Contract.

(k) “Days” means calendar days. In computing any period of time established under this Contract, 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.


(n) “Force Majeure Event” means strikes, lockouts, or other industrial disputes; explosions, epidemics, civil disturbances, acts of domestic or foreign terrorism, wars within the continental United States, riots or insurrections; embargos, natural disasters, including but not limited to landslides, earthquakes, floods or washouts; interruptions by
government or court orders; declarations of emergencies by applicable federal, state or local authorities; and present or future orders of any regulatory body having proper jurisdiction.

(o) “FTA” means the Federal Transit Administration.

(p) “Intellectual Property Rights” means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights, and any derivative works thereto; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

(q) “Notice of Award” means formal notice of award of the Contract to the Contractor issued by the Contracting Officer.

(r) “Notice to Proceed” means written authorization for the Contractor to start the Services.

(s) “Project Manager” means the designated individual to act on behalf of the Authority, to monitor and certify the technical progress of the Contractor’s Services under the terms of this Contract.

(t) “Proposal” means the offer of the proposer, submitted on the prescribed form, stating prices for performing the work described in the Scope of Services.

(u) “Services” means the services to be performed by the Contractor under this Contract, and includes services performed, workmanship, and supplies furnished or utilized in the performance of the Services.

(v) “Subcontract” means the Contract between the Contractor and its Subcontractors.

(w) “Subcontractor” means subcontractors of any tier.

(x) “Works” means any tangible or intangible items or things that have been or will be prepared, created, maintained, serviced, developed, incorporated, provided or obtained by the Contractor (or such third parties as the Contractor may be permitted to engage) at any time following the effective date of the Contract, for or on behalf of the Authority under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, and (vii) all other goods, services or deliverables to be provided to the Authority under the Contract.

2. **INDEFINITE QUANTITY, INDEFINITE DELIVERY CONTRACT:**

(a) This is an indefinite-quantity Contract for the supplies or Services specified and stated elsewhere in the Contract. The quantities of supplies and Services specified are estimates only and are not purchased by this Contract.

(b) There is no limit to the number of orders that may be placed under this contract. The Authority may order a minimum of one (1) vehicle for rideshare purposes, and a maximum of all items listed in Exhibit A-1, Pricing Schedule.

(c) There is no limit to the number of orders that may be placed under this Contract.
(d) The quantities provided by the Authority on the Pricing Schedule are estimates used as a basis for Contract Award and are, therefore, not hereby purchased under the Contract.

3. TERM

The term of the Contract shall be three (3) years from the Contract notice to proceed. No Services shall be performed under this Contract prior to issuance of a Notice to Proceed.

4. OPTION TO EXTEND CONTRACT TERM

The Authority shall have the unilateral right and option to extend the Contract for up to two (2) option periods for a twelve (12) month duration each at the option prices set forth in Exhibit A - Pricing Schedule upon written notice to Contractor.

5. ADDITIONAL OPTION TO EXTEND CONTRACT PERFORMANCE

If the options granted in Paragraph 4 have been exercised in their entirety, the Authority shall have the unilateral right and option to require continued performance of any services within the limits and rates specified in the Contract. This option may be exercised more than once, but the extension of performance hereunder shall not exceed a total of 6 months. The Authority may exercise the option by written notice to the Contractor.

6. INVOICING AND PAYMENT

(a) Invoices may be submitted once per month, and marked “Original” to:

Accounts Payable
Capital Metropolitan Transportation Authority
P.O. Box 6308
Austin, Texas 78762-6308

Or via e-mail to: ap_invoices@capmetro.org

and shall conform to policies or regulations adopted from time to time by the Authority. Invoices shall be legible and shall contain, as a minimum, the following information:

(1) the Contract and order number (if any);

(2) a complete itemization of all costs including quantities ordered and delivery order numbers (if any);

(3) any discounts offered to the Authority under the terms of the Contract;

(4) evidence of the acceptance of the supplies or services by the Authority; and

(5) any other information necessary to demonstrate entitlement to payment under the terms of the Contract.

(b) All undisputed invoices shall be paid within the time period allowed by law through the Texas Prompt Payment Act, Tex. Gov’t. Code § 2251.021(b).

(c) The Contractor shall be responsible for all costs/expenses not otherwise specified in this Contract, including by way of example, all costs of equipment provided by the Contractor or Subcontractor(s), all fees, fines, licenses, bonds, or taxes required or imposed against the Contractor and Subcontractor(s), travel related expenses, and all other Contractor’s costs of doing business.

(d) In the event an overpayment is made to the Contractor under this Contract or the Authority discovers that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset the amount of such overpayment or unauthorized charges against any indebtedness owed by the Authority to the Contractor, whether arising under this Contract or otherwise, including withholding payment of an invoice, in whole or in part, or
the Authority may deduct such amounts from future invoices. If an overpayment is made to the Contractor under this Contract which cannot be offset under this Contract, the Contractor shall remit the full overpayment amount to the Authority within thirty (30) calendar days of the date of the written notice of such overpayment or such other period as the Authority may agree. The Authority reserves the right to withhold payment of an invoice, in whole or in part, or deduct the overpayment from future invoices to recoup the overpayment.

7. RESERVED

8. INSURANCE

(a) The 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. The 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. Professional Liability insurance if required by this Contract. 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, A- and Class VII or better. All insurance companies shall be authorized to transact business in the State of Texas. The 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 represent the maximum risk or the maximum liability of the Contractor. The 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

(1) **Commercial General Liability Insurance** Coverage with limits of not less than One Million and No/100 Dollars ($1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage.

(2) **Automobile Liability Insurance** covering all owned, hired and non-owned automobiles used in connection with work with limits not less than One Million and No/100 Dollars ($1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage.

(3) **Workers' Compensation Insurance** Statutory Workers' Compensation coverage in the State of Texas. Employers Liability Insurance with minimum limits of ability of One Million and No/100 Dollars ($1,000,000).

(4) **Umbrella liability coverage with limits not less than Five Million and No/100 Dollars ($5,000,000).**

(b) 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.

(c) The 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 Services performed by or on behalf of the Contractor under this Contract and/or use of any Authority premises or equipment under this Contract.
(d) 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. All required endorsements shall be evidenced on the Certificate of Insurance, 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.

(e) 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 the Contractor.

(f) If any part of the Contract is sublet, the 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 Services 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 the Contractor's policies.

(g) All insurance required to be maintained or provided by the Contractor shall be with companies and through policies approved by The Authority with an AM Best rating of A - VII or better. The Authority reserves the right to inspect in person, prior to the commencement of the Services, all of the Contractor's insurance policy required under this Contract.

(h) 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 furnished to the attention of the Contracting Officer.

(i) 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.

9. PERFORMANCE OF SERVICES BY THE CONTRACTOR

Except as otherwise provided herein, the Contractor shall perform no less than thirty percent (30%) of the Services with its own organization. If, during the progress of Services hereunder, the Contractor requests a reduction in such performance percentage and the Authority determines that it would be to the Authority's advantage, the percentage of the Services required to be performed by the Contractor may be reduced; provided, written approval of such reduction is obtained by the Contractor from the Authority.

10. REMOVAL OF ASSIGNED PERSONNEL

The Authority may require, in writing, that the Contractor remove from the Services any employee or Subcontractor of Contractor that the Authority deems inappropriate for the assignment. The Authority may request, in writing, that the Contractor remove from the Services any employee or Subcontractor of Contractor that the Authority deems inappropriate for the assignment. All such matters will be reviewed and appropriately addressed in a timely manner and as Contractor deems fit.

11. REPRESENTATIONS AND WARRANTIES

The Contractor represents and warrants to the Authority, 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 the Contractor's personnel shall reflect sound professional knowledge, skill and judgment. If any breach of the representations and warranties is discovered by the Authority during the process of the work or within one (1) year after acceptance of the work by the Authority, the Contractor shall again cause the nonconforming or inadequate work to be properly performed at the 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 representations and warranties.

12. **INDEPENDENT CONTRACTOR**

The Contractor's relationship to the Authority in the performance of this Contract is that of an independent contractor. The personnel performing services under this Contract shall at all times be under the Contractor's exclusive direction and control and shall be employees of the Contractor and not employees of the Authority. The 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 the Contractor and the Authority by virtue of this Contract. The 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.

13. **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.

14. **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.

15. **EQUITABLE ADJUSTMENTS**

(a) Any requests for equitable adjustments under any provision shall be governed by the following provisions:

(1) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in this Paragraph, for Services involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request for any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(i) Proposals totaling $5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of Services involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(ii) For proposals in excess of $5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the Contract. The itemized breakdown shall, at the least, include the items specified in subparagraph (a)(2), below.

(b) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

16. **PERSONNEL ASSIGNMENTS**

(a) The Contractor shall perform the Services in an orderly and workmanlike manner, and shall utilize persons skilled and qualified for the performance of the Services. The Authority will have the right to review the experience of each person assigned to perform the Services. and approve personnel assignments, including those to be performed by Subcontractors.
(b) The Contractor certifies that the Contractor, and each Subcontractor, have established a criminal history background policy that complies with guidance issued by the U.S. Equal Employment Opportunity Commission and that the Contractor and each Subcontractor 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 Services being performed, considering the risk and liability to the Contractor and the Authority. The Authority reserves the right to require the Contractor and any Subcontractor 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) At the commencement of the Contract, the 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 on each candidate within the preceding 6-month period. Thereafter during the Term, the Contractor shall submit quarterly report containing a list of all persons (including Subcontractors) assigned to perform Services under the Contract and a certification that each named person has undergone a criminal background check as required by this Contract. The Authority shall have the right to audit the Contractor’s records for compliance with the provisions of this Section. Criminal background checks shall include the following:

1. State Criminal History: The Contractor shall research criminal history, including driving records (where applicable), covering all jurisdictions within the state, including local counties and municipalities.

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

3. National Sex Offender Registry

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

*Matters identified on the Long Form as military discipline will be considered in accordance with the corresponding crime listed below with respect to classification, severity and time elapsed.

The Contractor shall disclose to the Authority the type of arrests with pending dispositions and convictions for crimes according to the classification of offense and the timetable below:

<table>
<thead>
<tr>
<th>Offense Type</th>
<th>Action Required</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Crimes Against the Person (other than sex crimes)</strong></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><strong>Crimes Against the Person - Sex Crimes/Registered Sex Offenders</strong></td>
<td></td>
</tr>
<tr>
<td>ALL</td>
<td>Submit to Capital Metro for review</td>
</tr>
<tr>
<td><strong>Crimes Against Property</strong></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>
</tbody>
</table>

Moral Crimes, including, but not limited to: Drug Crimes, Prostitution, Bigamy, Illegal Gambling, Child Pornography

| Felony                                           | Submit to Capital Metro for review if less than 10 years from date of release from confinement |
Class A or B Misdemeanor
Submit to Capital Metro for review if less than 7 years from date of conviction

Class C Misdemeanor
Submit to Capital Metro for review if less than 5 years from date of conviction

Trading Offenses

Class A or B Misdemeanor, DWI/DUI or other "serious driving offense"
Disqualified if less than 7 years from date of conviction or deferred adjudication. Submit to Capital Metro for review if between 7-10 years since conviction or deferred adjudication or more than 2 convictions in a lifetime

Class C Misdemeanor
Disqualified from driving if more than 2 moving violations in the past 5 years (Any more than one driving safety course taken for a moving violation that appears on a five (5) year record will be treated as a moving violation and will count against the employee)

The 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 subparagraph (d).

(d) The 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, the 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 the Contractor within five (5) working days of receipt of all required documentation from the Contractor.

(e) The Contractor will conduct new criminal history background checks on all assigned personnel every two (2) years during the Contract to ensure the preceding criterion are still met by the assigned personnel and notify the Authority if an employee has a subsequent arrest with pending disposition or 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.

17. BADGES AND ACCESS CONTROL DEVICES

(a) The Contractor and each of the Contractor’s employees, as well as each Subcontractor of any tier and any workers working on behalf of Subcontractor, shall be required to wear a Capital Metro Contractor Photo Identification Badge (“badge”) at all times while on the Authority’s premises. The badge will be provided by Capital Metro. If any badge holder loses or misplaces his or her badge, the Contractor shall immediately notify the Project Manager upon discovery. The Contractor will be charged a $50.00 replacement fee for each lost or misplaced badge, which fee shall be deducted any amounts due and owing to the Contractor or if the Contract is terminated upon demand by the Authority. The Contractor shall return all badges provided when any badge holder is no longer working on the Contract, and all badges shall be returned upon completion of the Contract. In the event the Contractor fails to do so, the Contractor will pay a $50.00 per badge fee deducted from any amounts due and owing to the Contractor or if the Contract is terminated upon demand by the Authority. All badges should be returned to the Project Manager. The misuse of a badge may result in termination of the Contract.

(b) Access Control Devices will be issued to employees of the Contractor and to each Subcontractor of any tier and any worker working on behalf of Subcontractor as necessary to perform the Contract. Access Control Devices are not transferable between the Contractor employees or workers working on behalf of the Subcontractor. The Contractor employees and workers on behalf of the Subcontractor are prohibited from loaning Access Control Devices or providing access to an unauthorized person into restricted areas without prior arrangements with the Project Manager. All requests for new and replacement Access Control Devices must be submitted in writing to the Project Manager. Lost Access Control Devices must be reported to the Project Manager immediately upon discovery. All badges should be returned to the Project Manager. All Access Control Devices should be returned to the Project Manager. The misuse of an Access Control Device(s) may result in termination of the Contract. The Contractor shall return all Access Control Devices once an assigned employee or worker is no longer working on the Contract or upon termination of the Contract. In the event the Contractor fails to do so, then the Contractor shall be responsible for the replacement cost of an Access Control Device which
shall be deducted from any amounts due and owing to the Contractor or payable on demand if the Contract has terminated. The replacement cost will be calculated at current market value to include labor and materials.

(c) The provisions of this paragraph survive termination of the Contract.

18. CHANGES

(a) 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 paragraph 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.

(b) 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.

(c) Any other written order (which, as used in this paragraph (c), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change in the Contractor's obligations shall be treated as a Change Order under this paragraph; provided that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a Change Order.

(d) Except as provided in this paragraph, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this paragraph or entitle the Contractor to an equitable adjustment.

(e) If any change under this paragraph causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Services under this Contract, whether or not changed by any such order, the Contracting Officer may make an equitable adjustment and modify the Contract in writing in accordance with the provisions in paragraph entitled, “Equitable Adjustments” contained in Exhibit E.

19. TERMINATION FOR DEFAULT

(a) The Authority may, subject to the provisions of subparagraph (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 perform the Services within the time specified herein or any extension thereof; or

(2) if the Contractor fails to perform any of the other provisions of this Contract and does not cure such failure within a period of ten (10) days (or such longer period as the Authority may authorize in writing) after receipt of notice from the Authority specifying such failure.

(b) In the event the Authority terminates this Contract in whole or in part as provided in subparagraph (a) of this paragraph, 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 for actual costs incurred by the Authority associated with the replacement of such supplies or services, including, but not limited to, the cost of procuring a substitute contractor, including any increase in cost for the substitute supplies or services and the cost of any claim or litigation that is reasonably attributable to Contractor's failure to perform any services in accordance with this Contract; 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 paragraph. For purposes of this Section, Excess Costs shall mean actual, direct expenses actually incurred by the Authority as a result of the default by Contractor and expended by the Authority in order to procure such similar supplies and services, utilizing reasonable efforts to mitigate such costs, expenses in procuring such similar supplies
and services. Under no circumstances shall Excess Costs such costs include any consequential or incidental damages, costs or expenses, nor shall it include any loss of profit, interest, diminution of value, loss of use, punitive or other such damage or loss in whatever form or amount, it being expressly understood by the Authority and Contractor that the such damages are being expressly limited by this provision.

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

(d) If this Contract is terminated as provided in subparagraph (a), the Authority, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority any 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 Manufacturing Materials delivered to and accepted by the Authority shall be at the Contract price. The Authority may withhold from amounts otherwise due the Contractor for such completed 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 paragraph, it is determined by the Authority that the Contractor was not in default or that the default was excusable under the provisions of this paragraph, the rights and obligations of the parties shall be those provided in the paragraph entitled “Termination for Convenience” contained in this Exhibit E.

(f) The rights and remedies of the Authority provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

20. TERMINATION FOR CONVENIENCE

(a) 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.

(b) The Contractor shall incur no further obligations in connection with the terminated orders, and, on the date set forth in the notice of termination, the Contractor will stop providing Services to the extent specified. The Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated order. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated orders. 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 any orders not terminated by the notice of termination and may incur such obligations as are necessary to do so.

(c) 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: (1) any completed supplies; and (2) 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.

(d) The Authority shall pay the Contractor the following amounts:
21. 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.

22. INTELLECTUAL PROPERTY PROVISIONS

(a) As between the Contractor and the Authority, the Works and Intellectual Property Rights therein are and shall be owned exclusively by Capital Metro, and not the Contractor. The Contractor specifically agrees that all Works shall be considered “works made for hire” and that the Works shall, upon creation, be owned exclusively by the Authority. To the extent that the Works, under applicable law, may not be considered works made for hire, the Contractor hereby agrees that this Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to the Authority all right, title and interest in and to all worldwide ownership rights in the Works, and all Intellectual Property Rights in the Works, without the necessity of any further consideration, and the Authority shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Works.

(b) The Contractor, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by the Authority to evidence more fully the transfer of ownership of all Works to the Authority to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by the Authority. In the event the Authority shall be unable for any reason to obtain the Contractor’s signature on any document necessary for any purpose set forth in the foregoing sentence, the Contractor hereby irrevocably designates and appoints the Authority and its duly authorized officers and agents as the Contractor’s agent and the Contractor’s attorney-in-fact to act for and in the Contractor’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by the Contractor.

(c) To the extent that any pre-existing rights and/or third party rights or limitations are embodied, contained, reserved or reflected in the Works, the Contractor shall either:

(1) grant to the Authority the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to:
(i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof in connection with the sale, offering for sale, marketing, advertising, and promotion of the Authority’s goods and services, and in all forms of media, media channels and/or publicity that may now exist or hereafter be created or developed, including but not limited to television, radio, print, Internet, and social media (e.g., Facebook, Twitter, YouTube, etc.) and

(ii) authorize others to do any or all of the foregoing, or

(2) where the obtaining of worldwide rights is not reasonably practical or feasible, provide written notice to the Authority of such pre-existing or third party rights or limitations, request the Authority’s approval of such pre-existing or third party rights, obtain a limited right and license to use such pre-existing or third party rights on such terms as may be reasonably negotiated, and obtain the Authority’s written approval of such pre-existing or third party rights and the limited use of same. The Contractor shall provide the Authority with documentation indicating a third party’s written approval for the Contractor to use any pre-existing or third party rights that may be embodied, contained, reserved or reflected in the Works. The Contractor shall indemnify, defend and hold the Authority harmless from and against any and all claims, demands, regulatory proceedings and/or causes of action, and all losses, damages, and costs (including attorneys’ fees and settlement costs) arising from or relating to, directly or indirectly, any claim or assertion by any third party that the Works infringe any third-party rights. The foregoing indemnity obligation shall not apply to instances in which the Authority either:

(i) exceeded the scope of the limited license that was previously obtained by the Contractor and agreed to by the Authority, or

(ii) obtained information or materials, independent of the Contractor’s involvement or creation, and provided such information or materials to the Contractor for inclusion in the Works, and such information or materials were included by the Contractor, in an unaltered and unmodified fashion, in the Works.

(d) The Contractor hereby warrants and represents to the Authority that individuals or characters appearing or depicted in any advertisement, marketing, promotion, publicity or media, of any type or form that may now exist or hereafter be created or developed by or on behalf of the Contractor for the use by or benefit of the Authority, have provided their written consent for the use, reproduction, display, performance, and distribution of, and/or preparation of derivative works to, their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity (“Personality Rights”), and have been compensated for such Personality Rights, if appropriate. If such permission has been obtained for a limited time, the Contractor shall be responsible for any costs associated with claims resulting from such use, etc., of the Personality Rights after the expiration of those time limits. The Contractor agrees to defend, indemnify and hold the Authority harmless from any claims, including but not limited to claims for invasion of privacy, infringement of the right of publicity, libel, unfair competition, false advertising, intentional or negligent infliction of emotional distress, copyright or trademark infringement, and/or claims for attorney’s fees, resulting from such use, etc., of the Personality Rights.

(e) The Contractor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Works which the Contractor may now have or which may accrue to the Contractor’s benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term “Moral Rights” shall mean any and all rights of paternity or integrity of the Works and the right to object to any modification, translation or use of the Works, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a Moral Right.

(f) The Contract is intended to protect the Authority’s proprietary rights pertaining to the Works, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the Authority’s business. Therefore, the Contractor acknowledges and stipulates that a court of competent jurisdiction should immediately enjoin any material breach of the intellectual property and confidentiality provisions of this Contract, upon a request by the Authority, without requiring proof of irreparable injury as same should be presumed.
(g) Upon the request of the Authority, but in any event upon termination of this Contract, the Contractor shall surrender to the Authority all documents and things pertaining to the Works, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by the Contractor or furnished by the Authority to the Contractor, including all materials embodying the Works, any Authority confidential information, or Intellectual Property Rights, regardless of whether complete or incomplete. This paragraph is intended to apply to all Works made or compiled by the Contractor, as well as to all documents and things furnished to the Contractor by the Authority or by anyone else that pertains to the Works.

23. **STANDARDS OF PERFORMANCE**

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

24. **INSPECTIONS AND APPROVALS**

(a) All Services performed by the 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 the Contractor of responsibility for the proper performance of the Services. The Contractor shall provide sufficient, safe, and proper facilities at all times for such inspection of the Services and shall furnish all information concerning the Services and give the Authority or its representatives free access at all reasonable times to the facilities where the Services are performed.

(b) 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.

(c) 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 Services.

(d) 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 the Contract Sum. 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 Sum to reflect the reduced value of the Services performed.

(e) 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.

25. **SUSPENSION OF SERVICES**

(a) The Authority may order the Contractor in writing to suspend all or any part of the Services 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 Services 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 paragraph 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 paragraph 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 paragraph 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 paragraph.

26. PAYMENT TO SUBCONTRACTORS

(a) Payments by contractors to subcontractors associated with Authority contracts are subject to the time periods established in the Texas Prompt Payment Act, Tex. Gov't Code § 2251.

(b) A false certification to the Authority under the provisions of the paragraph entitled "Invoicing and Payment" hereof may be a criminal offense in violation of Tex. Penal Code § 10.

27. FEDERAL, STATE AND LOCAL TAXES

The Contract Sum includes all applicable federal, state, and local taxes and duties. The Authority is exempt from taxes imposed by the State of Texas and local sales and use taxes under Texas Tax Code § 151.309, and any such taxes included on any invoice received by the Authority shall be deducted from the amount of the invoice for purposes of payment. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. The Contractor bears sole and total responsibility for obtaining information pertaining to such exemption.

28. EQUAL OPPORTUNITY

During the performance of this Contract, the Contractor agrees that it will, in good faith, afford equal opportunity required by applicable federal, state, or local law to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability or any other characteristic protected by federal, state or local law.

29. 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 paragraph and not otherwise defined shall have the meanings as described to them in the Code of Conduct.

(b) The Contractor represents that no Employee has a Substantial Interest in the Contractor or this Contract, which Substantial Interest would create or give rise to a Conflict of Interest. The 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 the 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 Paragraph II, subparagraphs (1) and (3) of the Code of Conduct) in a business entity or real property.

(c) The Contractor agrees to ensure that the Code of Conduct is not violated as a result of the Contractor’s activities in connection with this Contract. The 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 the Contractor to cause an immediate divestiture of such Substantial Interest or elimination of such Conflict of Interest, and failure of the 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 the Contractor shall render this Contract voidable by the Authority.
(e) In accordance with paragraph 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.

30. GRATUITIES

The Authority may cancel this Contract, without liability to the 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 Contract. In the event this Contract 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.

31. PUBLICATIONS

All published material and written reports submitted under this Contract 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.

32. 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 any deliverables shall be referred to the Authority.

33. 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 the Contractor's professional obligation to maintain copies of its work product.

34. LIMITATION OF LIABILITY

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

35. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS

The Contractor agrees that it shall be in compliance with all laws, statutes, and other governmental requirements, regulations or standards prevailing during the term of this Contract.
36. **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 arising out of this Contract, 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 5th Street, Austin, Texas 78702.

37. **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 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.

38. **NOTICE OF LABOR DISPUTES**

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor immediately shall give notice, including all relevant information, to the Authority.

(b) The Contractor agrees to insert the substance of this paragraph, including this subparagraph (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.

39. **PUBLICITY RELEASES**

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this Contract or the Services 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.

40. **INTEREST OF PUBLIC OFFICIALS**

The Contractor represents and warrants that no employee, official, or member of the Board of the Authority is or will be pecuniarily interested or benefited directly or indirectly in this Contract. The Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts or otherwise) to any employee, official, or member of the Board of the Authority with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of this Contract. For breach of any representation or warranty in this paragraph, the Authority shall have the right to terminate this Contract without liability and/or have recourse to any other remedy it may have at law or in equity.

41. **INDEMNIFICATION**

(a) The 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 and pay any and all Damages (as defined herein) directly or indirectly resulting from, relating to, arising out of or attributable to any of the following:

1. any breach of any representation or warranty that the Contractor has made in this Contract;
(2) any breach, violation or default by or through the Contractor or any of its Subcontractors of any obligation of the Contractor in this Contract or any other agreement between the Contractor and the Authority;

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

(4) 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.

(b) “Action” means any action, appeal, petition, plea, charge, complaint, claim, suit, demand, litigation, mediation, hearing, inquiry, investigation or similar event, occurrence or proceeding.

(c) “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.

(d) “Threatened” means a demand or statement has been made (orally or in writing) or a notice has been given (orally or in writing), or any other event has occurred or any other circumstances exist that would lead a prudent person or entity to conclude that an Action or other matter is likely to be asserted, commenced, taken or otherwise pursued in the future.

(e) 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 the 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.

(f) The indemnification obligations and rights provided for in this Contract do not require (and shall not be construed as requiring) the Contractor to indemnify, hold harmless, or defend any indemnified party (or any third party) against any action or claim (or threatened action or claim) caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of any indemnified party, its agents or employees, or any third party under the control or supervision of any indemnified party, other than the Contractor or its agents, employees, or Subcontractors of any tier.

(g) This Paragraph will survive any termination or expiration of this Contract.

42. RECORD RETENTION; ACCESS TO RECORDS AND REPORTS

(a) The Contractor will retain, and will require its Subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

(b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price determinable Contract, or any combination thereof, the Contractor shall maintain, and the Authority 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.

(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 Contractor shall maintain all books, records, accounts and reports required under this paragraph for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(e) The Contractor agrees to provide sufficient access to the Authority and its contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required.

(f) The Contractor agrees to permit the Authority and its contractors access to the sites of performance under this Contract as reasonably may be required.

(g) If an audit pursuant to this paragraph reveals that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset or recoup such amounts against any indebtedness owed by it to the Contractor, whether arising under this Contract or otherwise, over a period of time equivalent to the time period over which such invoices or charges accrued.

(h) This Paragraph will survive any termination or expiration of this Contract.

43. 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 Force Majeure Events. 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 performance of the Services.

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

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

   (2) the Authority ordered the Contractor in writing to obtain these services from the other source; and

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

(c) Upon the request of the Contractor, the Authority shall ascertain the facts and extent of the failure. If the Authority 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 this Contract.

44. 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 the Contractor or any Subcontractor at any tier, or any employee thereof, while such person is on the premises of the Authority as an employee of the Contractor or Subcontractor.
45. **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.

46. **QUALITY ASSURANCE**

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

47. **INTERPRETATION OF CONTRACT – DISPUTES**

All questions concerning interpretation or clarification of this Contract or the acceptable fulfillment of this Contract by the 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 (2) weeks after the Authority notifies the 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 (2) weeks of the protest filing of his or her 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, the Contractor shall proceed with the Services in accordance with the determinations, instructions, and clarifications of the President/CEO. The Contractor shall be solely responsible for requesting instructions or interpretations and liable for any cost or expenses arising from its failure to do so. The Contractor’s failure to protest the Contracting Officer’s determinations, instructions, or clarifications within the two-week period shall constitute a waiver by the Contractor of all of its rights to further protest.

48. **TOBACCO-FREE WORKPLACE**

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

(b) The 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.

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

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

49. **ORDER OF PRECEDENCE**

In the event of any inconsistency between the provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Exhibit A – Pricing Schedule
2. Exhibit E – Contractual Terms and Conditions
3. Exhibit F – Scope of Services
4. Exhibit B – Representations and Certifications
5. Other provisions or attachments to the Contract

50. **ANTI-CORRUPTION AND BRIBERY LAWS**

The Contractor shall comply with all Applicable Anti-Corruption and Bribery Laws. The Contractor represents and warrants that it has not and shall not violate or cause the Authority to violate any such Anti-Corruption and Bribery
Laws. The Contractor further represents and warrants that, in connection with supplies or Services provided to the Authority or with any other business transaction involving the Authority, it shall not pay, offer, promise, or authorize the payment or transfer of anything of value, directly or indirectly to: (a) any government official or employee (including employees of government owned or controlled companies or public international organizations) or to any political party, party official, or candidate for public office or (b) any other person or entity if such payments or transfers would violate applicable laws, including Applicable Anti-Corruption and Bribery Laws. Notwithstanding anything to the contrary herein contained, the Authority may withhold payments under this Contract, and terminate this Contract immediately by way of written notice to the Contractor, if it believes, in good faith, that the Contractor has violated or caused the Authority to violate the Applicable Anti-Corruption and Bribery Laws. The Authority shall not be liable to the Contractor for any claim, losses, or damages related to its decision to exercise its rights under this provision.

51. RESERVED

52. ORGANIZATIONAL CONFLICT OF INTEREST (OCI)

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

(b) For the purposes of this paragraph, 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 paragraph. It agrees to be bound by its terms and conditions and understands that violation of this paragraph 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 paragraph.

53. MISCELLANEOUS

(a) This Contract does not intend to, and nothing contained in this Contract shall create any partnership, joint venture or other equity type agreement between the Authority and the Contractor.

(b) All notices, statements, demands, requests, consents or approvals required under this Contract or by law by either party to the other shall be in writing and may be given or served by depositing same in the United States mail, postage paid, registered or certified and addressed to the party to be notified, with return receipt requested; by personally delivering same to such party; an agent of such party; or by overnight courier service, postage paid and addressed to the party to be notified; or by email with delivery confirmation. Notice deposited in the U.S. mail in the manner hereinabove described shall be effective upon such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified.

If to the Contractor: As set forth in Exhibit B to this Contract

If to the Authority: Capital Metropolitan Transportation Authority
Attn: Director of Procurement
2910 E. 5th Street
Austin, Texas 78702

Address for notice can be changed by written notice to the other party.

(c) In the event the Authority finds it necessary to employ legal counsel to enforce its rights under this Contract, or to bring an action at law, or other proceeding against the Contractor to enforce any of the terms, covenants or conditions herein, the Contractor shall pay to the Authority its reasonable attorneys’ fees and expenses, regardless of whether suit is filed.
(d) If any term or provision of this Contract or any portion of a term or provision hereof or the application thereof to any person or circumstance shall, to any extent, be void, invalid or unenforceable, the remainder of this Contract will remain in full force and effect unless removal of such invalid terms or provisions destroys the legitimate purpose of the Contract in which event the Contract will be terminated.

(e) This Contract represents the entire agreement between the parties concerning the subject matter of this Contract and supersedes any and all prior or contemporaneous oral or written statements, agreements, correspondence, quotations and negotiations. In executing this Contract, the parties do not rely upon any statement, promise, or representation not expressed herein. This Contract may not be changed except by the mutual written agreement of the parties.

(f) A facsimile signature shall be deemed an original signature for all purposes. For purposes of this paragraph, the phrase “facsimile signature” includes without limitation, an image of an original signature.

(g) Whenever used herein, the term “including” shall be deemed to be followed by the words “without limitation.” Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. All Exhibits attached to this Contract are incorporated herein by reference.

(h) All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Authority, whether provided by law, equity, statute, or otherwise. The election of any one or more remedies the Authority will not constitute a waiver of the right to pursue other available remedies.

(i) The Contractor shall not assign the whole or any part of this Contract or any monies due hereunder without the prior written consent of the Contracting Officer. No assignment shall relieve the Contractor from any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void.

(j) The failure of the Authority to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver or deprive the Authority thereafter to insist upon strict adherence to that term or other terms of this Contract. Furthermore, the Authority is a governmental entity and nothing contained in this Contract shall be deemed a waiver of any rights, remedies or privileges available by law.

(k) This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any dispute arising with respect to this Contract shall be resolved in the state or federal courts of the State of Texas, sitting in Travis County, Texas and the Contractor expressly consents to the personal jurisdiction of these courts.

(l) This Contract is subject to the Texas Public Information Act, Tex. Govt. Code, Chapter 552.

(m) The Contractor represents, warrants and covenants that: (a) it has the requisite power and authority to execute, deliver and perform its obligations under this Contract; and (b) it is in compliance with all applicable laws related to such performance.

(n) The person signing on behalf of the Contractor represents for himself or herself and the Contractor that he or she is duly authorized to execute this Contract.

(o) 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.

(p) Capital Metro is a governmental entity and nothing in this Contract shall be deemed a waiver of any rights or privileges under the law.

(q) Funding for this Contract after the current fiscal year is subject to revenue availability and appropriation of funds in the annual budget approved by the Authority’s Board of Directors.

(r) Time is of the essence for all delivery, performance, submittal, and completion dates in this Contract.
54. FUNDING AVAILABILITY

Funding after the current fiscal year of any contract resulting from this solicitation is subject to revenue availability and appropriation of funds in the annual budget approved by the Authority’s Board of Directors.
1. **BACKGROUND**

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

2. **PURPOSE**

The purpose of this request for proposal is to solicit qualified, professional services in order to provide turn-key administration, operation and marketing of the MetroRideShare program, Austin’s regional vanpool program.

(a) The MetroRideShare program provides groups of five (5) to twelve (12) people with a month-to-month vanpool lease agreement including vehicle (7, 8 and 12-seats), insurance, maintenance, 24-hour roadside assistance and optional fuel purchasing program. Participants share the cost of the monthly lease, fuel, tolls and any other commute-related expenses. The monthly cost depends on the vehicle type chosen by the group, commute distance and the number of paying riders.

(b) Capital Metro currently offers a monthly subsidy of $500 for In-Service-Area groups or $450 for Out-of-Service-Area groups. (this information is provided for informational purposes only and Capital Metro makes no guarantees or commitments by including it in this RFP) In-Service-Area (ISA) groups operate wholly within the Capital Metro service area, while Out-of-Service Area (OSA) groups have either an origin or destination inside the Capital Metro service area. See Attachment-2- Service Area Map, attached hereto. The subsidy is used to offset the monthly lease cost of the vehicle. There are approximately 243 vanpools operating in the program with 82 ISA groups and 161 OSA groups. The future growth of the program is anticipated to be 20 additional vanpools per year, but may vary depending on, among other considerations, public demand and acceptance.

(c) The goal of the program is to reduce the use of single occupant vehicles during peak travel times to reduce congestion and improve air quality.

3. **CONTRACTOR’S RESPONSIBILITY**

Contractor will work to maintain the existing vanpool groups, work to identify prospective vanpool riders, work with employers to facilitate the formation of new vanpool groups, and develop a clear vanpool service delivery plan.

4. **TRANSITION PLAN**

(a) Contractor shall provide Capital Metro with a transition plan that describes in detail the mobilization of vanpool groups from the current vendor to the selected Contractor.

(b) Contractor will be required to conduct transition outreach meetings with program participants in conjunction with Capital Metro. The outreach meetings shall begin November 1, 2018 from Contract Notice to proceed and end December 31, 2018. Contractor must also be ready to place participants in comparable vehicles beginning January 1, 2019. Contractor will also address any concerns or questions participants may have during the transition period.
5. **MANAGEMENT SERVICES**

(a) Project Management – Contractor shall provide personnel and any technology and/or equipment necessary to assure that the highest quality of service is provided. Contractor shall have the capability to provide the services required, meet all deadlines and submit reports in order for Capital Metro to utilize this information in further development of the MetroRideShare program.

(b) Key Personnel - Contractor shall maintain, at a minimum, a full-time Project Manager and Account Executive, whose time is 100 percent dedicated to providing service for the MetroRideShare program. Capital Metro must approve key personnel. Contractor may not use key personnel provided for this contract outside of the Capital Metro service area without prior approval of Capital Metro.

(c) Personnel - Contractor shall submit with their proposal a staffing plan detailing how they will provide service under this contract. This plan shall include, at a minimum, the professional credentials and expertise, and functions to be performed by personnel assigned to this project. Personnel includes all key personnel, partners, managers, seniors and other professional staff that will provide services and/or perform work in conjunction with this project. Any staff changes during the service of the contract, will require the Contractor to submit the professional credentials, expertise, and functions to be performed by the new personnel assigned to this project.

(d) Performance – Contractor shall work cooperatively and coordinate closely with Capital Metro in matters assuring service quality, providing operational data, responding to comments from passengers and the public and responding to specific requests, as the need arises. Responses to any written requests from Capital Metro for additional information will require answers or the requested information from the Contractor within three (3) business days.

(e) Attendance at Meetings – Contractor shall be expected to attend regular staff and performance meetings at Capital Metro’s request.

(f) Reporting - Contractor shall be responsible for the timely, complete and accurate delivery of any requested reports and/or forms. All data collected and/or reports generated must be prepared legibly and typed or developed utilizing an MS Word or MS Excel format and will be submitted electronically, unless otherwise specified or agreed to in writing by Capital Metro. Reports and/or forms shall be provided at no additional expense to Capital Metro.

(g) Records – All reports and/or forms maintained by the Contractor during the term of the contract shall become the property of Capital Metro and be furnished at the end of the contract term.

6. **VEHICLES**

(a) Vehicles - Contractor shall provide a range of vehicles configured to seat seven (7) to twelve (12) passengers. Vehicles shall be in the manufacturer’s standard white color, and be no more than four (4) years old and/or have not exceeded 100,000 miles. Vehicles shall comply with all local, state and federal laws and regulations. Contractor shall manage the vehicle fleet from procurement, to delivery, to operations and retirement of vehicles.

(b) Accessible Vehicles - Contractor shall provide, as needed, accessible vans that are compliant with the Americans with Disabilities Act (ADA) regulations to accommodate the request made by persons qualified under ADA. Any vehicle modifications shall conform to ADA regulations. Accessible vehicles, including lift-equipped, shall have the appropriate seating capacity for the vanpool and made available within 30-days of receiving fully completed and approved paperwork from the vanpool Coordinator and/or Primary Driver.

(c) Back-up Vehicles - Contractor shall maintain a supply of back-up vehicles that are available for use by vanpool groups in the event their vehicles breaks down or required repairs make their regular vehicle unavailable for commute service. A ten (10%) percent back-up ratio is desirable.
(d) Branding of Vehicles – Contractor shall decal all vehicles to be used in the program with the MetroRideShare branding, per specifications provided and approved by Capital Metro, before the vehicle is placed in service. Contractor shall pay all costs associated with decaling, including but not limited to, removal of old decals, printing and installation of decals. Contractor will also pay for decal replacement when necessary. No other graphics may be applied to vehicles used in the program vehicle without written consent from Capital Metro.

(e) Alternative Transportation Services - Contractor may choose to provide alternative transportation services. Capital Metro encourages the introduction of alternative fuel vehicle options and innovative technologies to maximize efficiencies and the potential for commuters to participate in a vanpooling arrangement. Alternative fuel vehicle options may include hybrid and/or zero-emission vehicles. Innovative technologies may include on-demand applications to help fill empty vanpool seats.

7. FLEET ADMINISTRATION

(a) Maintenance – Contractor shall provide a maintenance program to eliminate interruption of the vanpool group’s commute service. Contractor shall submit with their proposal a detailed description of the maintenance plan to be used in the program. This plan shall include, at a minimum, a plan to provide scheduled preventative maintenance and unscheduled repairs. All maintenance and repair activity will be documented and submitted to Capital Metro, upon request.

(b) Accident and Subrogation Management Services - Contractor shall manage all accidents and subrogation services for the vanpool groups. Contractor shall submit with their proposal a detailed description of the accident and subrogation plan to be used in the program. This plan shall include, at a minimum, a comprehensive methodology to investigate accidents, provide emergency assistance and report accident. All accident/incident reports will be documented and submitted to Capital Metro, upon request.

(c) Safety Training – Contractor shall provide a safety training program that assures the safety of commuters, employees, and assets. Contractor shall submit with their proposal a detailed description of the safety training plan to be used in the program. This plan shall include, at a minimum, safety training to all program drivers every two (2) years and periodic refresher training after an accident/incident is reported, or upon receipt of a driving complaint. All training will be documented and submitted to Capital Metro, upon request.

(d) Licensing and Title – Contractor shall inspect, license and register all vehicles to be used in the program, in accordance with applicable State of Texas and local laws.

8. VANPOOL DRIVERS AND GROUPS

(a) Drivers - Contractor shall be responsible for establishing specified criteria for the selection of primary and alternate drivers, and for processing driver applications and agreements. Contractor shall provide with their proposal a detailed description of how driver screening will handled and provide current copies of the driver selection criteria, driver application and agreement.

(b) Orientation Training – Contractor shall provide an orientation training program to familiarize primary and alternate drivers with program guidelines, including but not limited to, driver responsibilities, maintenance requirements, safety training, accident and emergency procedures, fare collection and record keeping. This shall be accomplished through an initial orientation training before the vanpool begins operating.

(c) Conflict Resolution – Contractor will make every effort to resolve vanpool group complaints and group conflict as quickly as possible. In most cases, Contractor will take a facilitating role in resolving group conflict. Contractor will take a director role in investigating and resolving complaints when passenger safety is an issue.
(d) Complaints - Contractor shall be responsible for monitoring and acting on reports and observations of unsafe, poor or driver behavior, and customer complaints. All complaints and final resolutions will be documented and submitted to Capital Metro, upon request.

9. MARKETING AND OUTREACH

(a) Marketing and Outreach – Contractor shall engage in marketing and outreach activities designed to support public awareness, promote and expand the program to commuters, employers and other organizations. Contractor shall submit with their proposal a detailed description of the marketing and outreach plan to be used in the program. Contractor should demonstrate innovative strategies and/or technologies to promote and expand vanpooling in the region.

(b) Coordination - Contractor will coordinate marketing and outreach efforts in conjunction with Capital Metro and with the outreach staff of Capital Metro’s commuter programs and transportation partners to achieve program goals.

(c) Identification - Contractor shall use the MetroRideShare brand to identify themselves in its email signatures, business cards and any other correspondence or communication to the public regarding services provided under this contract. No other brand name shall be used in connection with the MetroRideShare program, unless approved in writing by Capital Metro.

(d) Collateral Materials – Contractor shall work with Capital Metro on the development of collateral materials to be used in the program. Capital Metro retains final approval over branding, use of Capital Metro logos, graphics and messaging. All collateral materials developed and/or paid for by Capital Metro are owned by Capital Metro and may not be used in any other program without the written permission from Capital Metro.

10. ADMINISTRATION

(a) Customer Service – Contractor shall serve as the primary point of contact for all customer service needs and provide services in a safe, courteous and professional way. Contractor shall manage the MetroRideShare telephone number 512-477-RIDE (7433). Local Contractor customer service coverage is expected, at a minimum, between 8 a.m. and 5 p.m. Central Standard Time, Monday through Friday.

(b) Database – Contractor must maintain a current database of all vehicles, drivers and passengers including but not limited to vehicle identification number, vanpool identification number, vanpools in operation, drivers and passengers, contact information for all drivers and passengers, origin and destination location for each vanpool, number of riders for each vanpool, number of empty seats for each vanpool, number of commute days per month and daily roundtrip miles. Contractor shall submit with their proposal a detailed description of how tracking of the vehicles, drivers and passengers will be handled. Contractor shall provide a current database to Capital Metro monthly. The database is due on or before the 11th of the following month. For the February 2018 Vehicle database see Attachment-3-Vehicle Database, attached hereto. (This information is provided for informational purposes only and Capital Metro makes no guarantees or commitments by including it in this RFP)

(c) Ride-matching – Contractor shall provide ride matching and coordination services to fill seats in existing vanpools or help commuters start new vanpools. Vanpools are a public transportation service and any person wishing to join the vanpool must be accepted, provided they fully cover their portion of the cost and their work schedule and route are compatible. Contractor shall submit with their proposal a detailed description of how ride matching will be provided for potential program participants. Contractor should demonstrate innovative strategies and/or technologies to fill empty seats and expand vanpooling in the region.

(d) Summary and Performance Report - Contractor shall provide a monthly summary and performance report detailing all vanpools starts, vanpool terminations, vehicle switches, and driver switches detailing the prior month’s activity. The report should also provide a summary that shows the total number of vehicles in service, the total number...
of back-up vehicles, the total number of vehicles in the fleet, total number of active riders, total seating capacity of
the active fleet, and capacity utilization as a percent of total seating capacity. Finally, the report must summarize all
marketing and outreach activities for the month. The monthly report is due on or before the 11th of the following
month. For suggested template see Attachment-1-Monthly Report Template, attached hereo.

(e) Surveys – Contractor shall conduct a semi-annual survey to gauge the satisfaction of program participants.
Surveys shall be conducted October and April of each contract year. Contractor shall submit with their proposal a
detailed description of how customer satisfaction surveys will be conducted and measured. A final survey report will
be provided to Capital Metro, upon request.

11. NATIONAL TRANSIT DATABASE (NTD) REPORTING

(a) Data Collection – Contractor shall collect data, keep records and provide reports sufficient to enable Capital
Metro to meet its Federal Transportation Administration (FTA) National Transit Database (NTD) requirements.
Contractor is responsible for obtaining all pertinent FTA NTD regulations and procedures to ensure that all required
information is collected and reported in a timely fashion to Capital Metro. Contractor shall submit with their proposal
da detailed description of the data collection plan, quality control and quality assurance procedures to ensure
compliance.

(b) National Transit Database (NTD) Reporting – Contractor shall provide a monthly report detailing the prior month
and year-to-date data collected for the NTD report. The monthly report is due on or before the 11th of the following
month. Contractor must also have the NTD reports audited by an experienced third party, at the Contractor's
expense, and submitted to Capital Metro. Final Audited Report is due on or before November 30th for the prior fiscal
year (ending September 30th).

12. VANPOOL FARES AND SUBSIDIES

(a) Fare Billing and Payment Collection - Contractor shall be responsible for entering into an agreement with each
vanpool group and be responsible for billing and collecting fare payments from participants in a timely fashion.
Contractor shall also provide different avenues of payment available to participants including, drop off/mail payments
locations, electronic payment media, and other means of fare payment. Contractor shall submit with their proposal
detailed description of how fare billing and payment collection will be handled. Fares are subject to change and
Contractor will be responsible for enforcing any fare changes. Fares changes shall be effective January 1st of each
contract year.

(b) Subsidies – Contractor shall be responsible for administering the MetroRideShare subsidy which consists of a
monthly subsidy allowance determined by Capital Metro. The subsidy will be deducted from the vanpool group’s
monthly fare and be prorated based on a thirty (30) day month. Capital Metro shall have no financial responsibility
for fares not covered by the subsidy. Currently, the monthly vanpool subsidy is: $500 for In-Service-Area groups or
$450 for Out-of-Service-Area groups.(this information is offered for informational use only and Capital Metro makes
no guarantees or commitments by including it in this RFP) In-Service-Area (ISA) groups operate wholly within the
Capital Metro service area, while Out-of-Service Area (OSA) groups have either an origin or destination inside the
Capital Metro service area.

(c) Contract Invoicing – Contractor shall remit to Capital Metro a complete and accurate invoice for allowable costs
incurred during the invoice period monthly. Invoices shall include all costs related to the administration of the
program, subsidies, Guaranteed Ride Home expenses and/or other costs as approved in writing by Capital Metro.
The monthly contract invoice is due on or before the 11th 15th of the following month.
13. **FUEL MANAGEMENT SERVICES**

Fuel Card - Contractor may choose to provide a fuel management program and a fuel card for vanpool participants. Fuel provider shall a minimum of fifty (50) fueling stations at geographically convenient sites throughout the vanpool service area. Participants will be responsible for fuel payment.

14. **GUARANTEED RIDE HOME PROGRAM**

Guaranteed Ride Home Program – Contractor shall manage the Guaranteed Ride Home Program (GRH). Contractor shall provide registered participants with a ride from the workplace to home in case of an emergency or unexpected circumstance, up to four (4) times per calendar year. Participants must pay the $5.00 registration fee to Contractor and must be registered prior to the GRH ride. Contractor shall charge Capital Metro a flat fee for each GRH eligible trip provided. Maximum reimbursement per trip is $48.50. Capital Metro will pay a maximum of one (1) trip per quarter for all registered participants. GRH will only be reimbursed in the following situations:

- i. Rider gets sick at work or is injured at work
- ii. Rider’s family members get sick or is injured
- iii. Rider has a personal crisis at home
- iv. Unexpected overtime
- v. Normal vanpool arrangement fails to operate on the trip home
- vi. Unexpected business appointment.

15. **DELIVERABLES**

   - (a) Monthly Database – To be provided on or before the 11th of the following month.
   - (b) Monthly Summary and Performance Report – To be provided on or before the 11th of the following month.
   - (c) Monthly National Transit Database (NTD) Report – To be provided on or before the 11th of the following month.
   - (d) Monthly Contract Invoicing – To be provided on or before the 11th of the following month.
   - (e) Semi-Annual Survey and Final Reports – To be conducted October and April of each contract year, and final report due upon request.
   - (f) Annual Audited National Transit Database Report – To be provided on or before November 30th of each contract year.
   - (g) Biennial Safety Training Reports – To be conducted on Base Year 2 and Option Year 2 and report due upon request.
   - (h) Maintenance and Repair Activity Report – To be provided upon request. To be provided quarterly in October, January, April and July of each year.
   - (i) Accident/Incident Reports – To be provided upon request. To be provided as they occur. On or before the 11th of the following month. (Note: This deliverable is now on the same timeline as all the monthly deliverables.)
   - (j) Periodic Safety Refresher Training Reports – To be provided upon request. To be provided quarterly in October, January, April and July of each year.
(k) Ad Hoc Reports and/or Forms – To be provided upon requests, within 5 business days of the initial request.

16. **CAPITAL METRO RESPONSIBILITIES**

(a) Project Manager – Capital Metro will provide a Project Manager who will be the primary point of the contact and will be responsible for managing all aspects of the contract including billing issues, contract issues and other issues that arise from the management of such contract. Should the Project Manager not be available the secondary point of contact is Vice President, Operations and Maintenance Oversight. Contract modifications should be directed to Procurement’s Contract Administrator.

(b) Website Support – Capital Metro will continue to provide support on the agency website regarding details of the program ([www.capmetro.org](http://www.capmetro.org)).