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**CONTRACT NO. 200419**  
**(RFP 304849)**  
**BUSINESS CENTER SERVICES**

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**CONTRACTOR:** Canon Solutions America, Inc.  
One Canon Park  
Melville, NY 11747  
Phone: (844) 443-4636

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**AWARD DATE:** June 18, 2019

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**CONTRACT TERM:** August 12, 2019 THRU August 11, 2022

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**PRICE:** \$1,337,624.16

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**PROJECT MANAGER:** Donna Simmons  
(512) 389-7520  
[donna.simmons@capmetro.org](mailto:donna.simmons@capmetro.org)

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**CONTRACT ADMINISTRATOR:** Sean Wighaman  
(512) 369-6225  
[sean.wighaman@capmetro.org](mailto:sean.wighaman@capmetro.org)

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

**CONTRACT 200419**  
**(RFP 304849)**  
**BUSINESS CENTER SERVICES**

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**AWARD/CONTRACT**

<b>1. SOLICITATION NO:</b> 304849	<b>2. CONTRACT NO.:</b> 200419	<b>3. EFFECTIVE DATE:</b> See Contracting Officer's Signature Date
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<b>4. CONTRACTS ADMINISTRATOR</b>	
<b>NAME:</b> Sean Wighamman	<b>PHONE:</b> 512-369-6225
<b>5. SHIP TO ADDRESS:</b> Capital Metro 2910 East 5 <sup>th</sup> Street Austin, Texas 78702	<b>6. DELIVERY TERMS:</b> FOB Destination
<b>8. CONTRACTOR NAME &amp; ADDRESS:</b> Canon Solutions America, Inc. One Canon Park Melville, NY 11747	<b>7. DISCOUNTS FOR PROMPT PAYMENT:</b> N/A
<b>PHONE:</b> (844) 443-4636	<b>9. REMITTANCE ADDRESS:</b> (If different from Item 8)
<b>FAX:</b>	

**10. SBE GOAL:** N/A

**CONTRACT EXECUTION**

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

**NEGOTIATED AGREEMENT:** (Contractor is required to sign below and return 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 solicitation, as amended, and (c), such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein.

**SIGNATURE OF CONTRACTOR:**

Name/Title: Makoto Kojima, Vice President, Business Operations  
Signature: *Makoto Kojima* Date: 6/14/2019

**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-1. Exhibit E-Revised-1 shall be replaced in its entirety with Exhibit E-Revised-2, Contractual Terms and Conditions, attached hereto and made a part hereof for all pertinent purposes.

Refer to Exhibit F. Exhibit F shall be replaced in its entirety with Exhibit F-Revised-1, Scope of Services, attached hereto and made a part hereof for all pertinent purposes.

**ACCEPTED AS TO:** Exhibit A-Revised-4, Pricing Schedule, all items in Section 7, Pricing: Base Period - Year 1, Section 8, Pricing: Base Period - Year 2, and Section 9, Pricing: Base Period - Year 3, inclusive, for a total not-to-exceed amount \$1,337,624.16.

**SIGNATURE OF CONTRACTING OFFICER:**

Typed Name: Muhammad Abdullah, C.P.M. Contracting Officer  
Signature: \_\_\_\_\_ E-SIGNED by Muhammad Abdullah Date: 6/21/2019



**EXHIBIT A-Revised-4**

**PRICING SCHEDULE**

**RFP 304849**

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

**1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT**

Company Name (Printed)	Canon Solution American, Inc		
Address	One Canon Park		
City, State, Zip	Melville, NY, 11747		
Phone, Fax, Email	1-844-443-4636		
The undersigned agrees, if this offer is accepted within the period specified, to furnish any or all supplies and/or services specified in the Schedule at the prices offered therein.			
Authorized Agent Name and Title (Printed)	John Reilly - SVP		
Signature and Date			4/22/19

**2. ACKNOWLEDGEMENT OF AMENDMENTS**

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

Amendment #	Date	Amendment #	Date

**3. PROMPT PAYMENT DISCOUNT**

# of Days		Percentage	%
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Note, payment terms are specified in Exhibit E, Contractual Terms and Conditions.

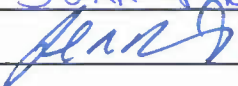
**4. SBE GOAL (TO BE COMPLETED UPON AWARD BY CAPITAL METRO)**

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

	%
--	---

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

The Authority hereby accepts this offer.

Authorized Agent Name and Title (Printed)	John Reilly - SVP		
Signature and Date			4/22/19
Accepted as to:			

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

**For further information regarding Exhibit A, you may:**

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

**OR**

- Submit a public information request directly to [PIR@capmetro.org](mailto:PIR@capmetro.org).

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

**EXHIBIT B-Revised-1**

**REPRESENTATIONS AND CERTIFICATIONS**

**(LOCALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)**

**MUST BE RETURNED WITH THE OFFER**

**1. TYPE OF BUSINESS**

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

- An individual
- A partnership
- A sole proprietor
- A corporation
- Another entity \_\_\_\_\_

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

New York

**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 dominant minority voting rights, use of proxy voting, or otherwise.

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

██████████

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

Canon, U.S.A. Inc.  
One Canon Park  
Melville, NY 11747  
██████████

**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 John Reilly [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 other person not specified could result in disclosure of proprietary or other competitive sensitive information or otherwise create the appearance of impropriety or unfair competition and thereby compromise the integrity of the Authority's procurement system. If competition cannot be resolved through normal communication channels, the Authority's protest procedures shall be used for actual or prospective competitors claiming any impropriety in connection with this solicitation.

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

Individual's Name	Date/Subject of Communication

(Attach continuation form, if necessary.)

**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 ETHICS**

### (a) Statement of Purpose

The brand and reputation of Capital Metro is determined in large part by the actions or ethics of representatives of the agency. Capital Metro is committed to a strong ethical culture and to ethical behavior by all individuals serving Capital Metro as employees, members of the Board of Directors or volunteers. Individuals serving Capital Metro will conduct business with honesty and integrity. We will make decisions and take actions that are in the best interest of the people we serve and that are consistent with our mission, vision and this policy. The Code of Ethics (the "Code") documents Capital Metro's Standards of Ethical Conduct and policies for Ethical Business Transactions. Compliance with the Code will help protect Capital Metro's reputation for honesty and integrity. The Code attempts to provide clear principles for Capital Metro's expectations for behavior in conducting Capital Metro business. We have a duty to read, understand and comply with the letter and spirit of the Code and Capital Metro policies. You are encouraged to inquire if any aspect of the Code needs clarification.

### (b) Applicability

The Code applies to Capital Metro employees, contractors, potential contractors, Board Members and citizen advisory committee members. Violation of the Code of Ethics may result in discipline up to and including termination or removal from the Board of Directors.

### (c) Standards of Ethical Conduct

The public must have confidence in our integrity as a public agency and we will act at all times to preserve the trust of the community and protect Capital Metro's reputation. To demonstrate our integrity and commitment to ethical conduct we will:

- (1) Continuously exhibit a desire to serve the public and display a helpful, respectful manner.
- (2) Exhibit and embody a culture of safety in our operations.
- (3) Understand, respect and obey all applicable laws, regulations and Capital Metro policies and procedures both in letter and spirit.
- (4) Exercise sound judgment to determine when to seek advice from legal counsel, the Ethics Officer or others.
- (5) Treat each other with honesty, dignity and respect and will not discriminate in our actions toward others.
- (6) Continuously strive for improvement in our work and be accountable for our actions.
- (7) Transact Capital Metro business effectively and efficiently and act in good faith to protect the Authority's assets from waste, abuse, theft or damage.
- (8) Be good stewards of Capital Metro's reputation and will not make any representation in public or private, orally or in writing, that states, or appears to state, an official position of Capital Metro unless authorized to do so.
- (9) Report all material facts known when reporting on work projects, which if not revealed, could either conceal unlawful or improper practices or prevent informed decisions from being made.

(10) Be fair, impartial and ethical in our business dealings and will not use our authority to unfairly or illegally influence the decisions of other employees or Board members.

(11) Ensure that our personal or business activities, relationships and other interests do not conflict or appear to conflict with the interests of Capital Metro and disclose any potential conflicts.

(12) Encourage ethical behavior and report all known unethical or wrongful conduct to the Capital Metro Ethics Officer or the Board Ethics Officer.

(d) Roles and Responsibilities

It is everyone's responsibility to understand and comply with the Code of Ethics and the law. Lack of knowledge or understanding of the Code will not be considered. If you have a question about the Code of Ethics, ask.

It is the responsibility of Capital Metro management to model appropriate conduct at all times and promote an ethical culture. Seek guidance if you are uncertain what to do.

It is Capital Metro's responsibility to provide a system of reporting and access to guidance when an employee wishes to report a suspected violation and to seek counseling, and the normal chain of command cannot, for whatever reason, be utilized. If you need to report something or seek guidance outside the normal chain of command, Capital Metro provides the following resources:

(1) Anonymous Fraud Hotline – Internal Audit

(2) Anonymous Online Ethics Reporting System

(3) Contact the Capital Metro Ethics Officer, Vice-President of Internal Audit, the EEO Officer or Director of Human Resources

(4) Safety Hotline

The Capital Metro Ethics Officer is the Chief Counsel. The Ethics Officer is responsible for the interpretation and implementation of the Code and any questions about the interpretation of the Code should be directed to the Ethics Officer.

(e) Ethical Business Transactions

Section 1. Impartiality and Official Position

(1) A Substantial Interest is defined by Tex. Loc. Govt. Code, § 171.002. An official or a person related to the official in the first degree by consanguinity or affinity has a Substantial Interest in:

(i) A business entity if the person owns ten percent (10%) or more of the voting stock or shares of the business entity or owns either 10% or more or \$15,000 or more of the fair market value of the business entity OR funds received by the person from the business entity exceed 10% of the person's gross income for the previous year; or

(ii) Real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

Capital Metro will not enter into a contract with a business in which a Board Member or employee or a Family Member of a Board Member or employee as defined in Section 8 has a Substantial Interest except in case of emergency as defined in the Acquisition Policy PRC-100 or the business is the only available source for essential goods and services or property.

(2) No Board Member or employee shall:

(i) Act as a surety for a business that has work, business or a contract with Capital Metro or act as a surety on any official bond required of an officer of Capital Metro.

(ii) Represent for compensation, advise or appear on behalf of any person or firm concerning any contract or transaction or in any proceeding involving Capital Metro's interests.

(iii) Use his or her official position or employment, or Capital Metro's facilities, equipment or supplies to obtain or attempt to obtain private gain or advantage.

(iv) Use his or her official position or employment to unfairly influence other Board members or employees to perform illegal, immoral, or discreditable acts or do anything that would violate Capital Metro policies.

(v) Use Capital Metro's resources, including employees, facilities, equipment, and supplies in political campaign activities.

(vi) Participate in a contract for a contractor or first-tier subcontractor with Capital Metro for a period of one (1) year after leaving employment on any contract with Capital Metro.

(vii) Participate for the life of the contract in a contract for a contractor or first-tier subcontractor with Capital Metro if the Board Member or employee participated in the recommendation, bid, proposal or solicitation of the Capital Metro contract or procurement.

## Section 2. Employment and Representation

A Board Member or employee must disclose to his or her supervisor, appropriate Capital Metro staff or the Board Chair any discussions of future employment with any business which has, or the Board Member or employee should reasonably foresee is likely to have, any interest in a transaction upon which the Board Member or employee may or must act or make a recommendation subsequent to such discussion. The Board Member or employee shall take no further action on matters regarding the potential future employer.

A Board Member or employee shall not solicit or accept other employment to be performed or compensation to be received while still a Board Member or employee, if the employment or compensation could reasonably be expected to impair independence in judgment or performance of their duties.

A Board Member or employee with authority to appoint or hire employees shall not exercise such authority in favor of an individual who is related within the first degree, within the second degree by affinity or within the third degree by consanguinity as defined by the Capital Metro Nepotism Policy in accordance with Tex. Govt. Code, Ch. 573.

## Section 3. Gifts

It is critical to keep an arms-length relationship with the entities and vendors Capital Metro does business with in order to prevent the appearance of impropriety, undue influence or favoritism.

No Board Member or employee shall:

(1) Solicit, accept or agree to accept any benefit or item of monetary value as consideration for the Board Member's or employee's decision, vote, opinion, recommendation or other exercise of discretion as a public servant. [Tex. Penal Code §36.02(c)]

(2) Solicit, accept or agree to accept any benefit or item of monetary value as consideration for a violation of any law or duty. [Tex. Penal Code §36.02(a)(1)]

(3) Solicit, accept or agree to accept any benefit or item of monetary value from a person the Board Member or employee knows is interested in or likely to become interested in any Capital Metro contract or transaction if the benefit or item of monetary value could reasonably be inferred as intended to influence the Board Member or employee. [Tex. Penal Code §36.08(d)]

(4) Receive or accept any gift, favor or item of monetary value from a contractor or potential contractor of Capital Metro or from any individual or entity that could reasonably be inferred as intended to influence the Board Member or employee.

Exception: Consistent with state law governing public servants, a gift does not include a benefit or item of monetary value with a value of less than \$50, excluding cash or negotiable instruments, unless it can reasonably be inferred that the item was intended to influence the Board Member or employee. A department may adopt more restrictive provisions if there is a demonstrated and documented business need. [Tex. Penal Code § 36.10(a)(6)]

Exception: 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 is not a violation of this policy. The Capital Metro Ethics Officer or Board Ethics Officer must be consulted for a determination as to whether a potential gift falls within this exception.

Exception: Food, lodging, or transportation that is provided as consideration for legitimate services rendered by the Board Member or employee related to his or her official duties is not a violation of this policy.

If you are uncertain about a gift, seek guidance from the Ethics Officer.

#### Section 4. Business Meals and Functions

Board Members and employees may accept invitations for free, reasonable meals in the course of conducting Capital Metro's business or while attending a seminar or conference in connection with Capital Metro business as long as there is not an active or impending solicitation in which the inviting contractor or party may participate and attendance at the event or meal does not create an appearance that the invitation was intended to influence the Board Member or employee.

When attending such events, it is important to remember that you are representing Capital Metro and if you chose to drink alcohol, you must do so responsibly. Drinking irresponsibly may lead to poor judgment and actions that may violate the Code or other Capital Metro policies and may damage the reputation of Capital Metro in the community and the industry.

#### Section 5. Confidential Information

It is everyone's responsibility to safeguard Capital Metro's nonpublic and confidential information.

No Board Member or employee shall:

(1) Disclose, use or allow others to use nonpublic or confidential information that Capital Metro has not made public unless it is necessary and part of their job duties and then only pursuant to a nondisclosure agreement approved by legal counsel or with consultation and permission of legal counsel.

(2) Communicate details of any active Capital Metro procurement or solicitation or other contract opportunity to any contractor, potential contractor or individual not authorized to receive information regarding the active procurement or contract opportunity.

#### Section 6. Financial Accountability and Record Keeping

Capital Metro's financial records and reports should be accurate, timely, and in accordance with applicable laws and accounting rules and principles. Our records must reflect all components of a transaction in an honest and forthright manner. These records reflect the results of Capital Metro's operations and our stewardship of public funds.

A Board Member or employee shall:

- (1) Not falsify a document or distort the true nature of a transaction.
- (2) Properly disclose risks and potential liabilities to appropriate Capital Metro staff.
- (3) Cooperate with audits of financial records.
- (4) Ensure that all transactions are supported by accurate documentation.
- (5) Ensure that all reports made to government authorities are full, fair, accurate and timely.
- (6) Ensure all accruals and estimates are based on documentation and good faith judgment.

#### Section 7. Conflict of Interest

Employees and Board Members are expected to deal at arms-length in any transaction on behalf of Capital Metro and avoid and disclose actual conflicts of interest under the law and the Code and any circumstance which could impart the appearance of a conflict of interest. A conflict of interest exists when a Board Member or employee is in a position in which any official act or action taken by them is, may be, or appears to be influenced by considerations of personal gain rather than the general public trust.

Conflict of Interest [Tex. Loc. Govt. Code, Ch. 171 & 176, § 2252.908]

No Board Member or employee shall participate in a matter involving a business, contract or real property transaction in which the Board Member or employee has a Substantial Interest if it is reasonably foreseeable that an action on the matter would confer a special economic benefit on the business, contract or real property that is distinguishable from its effect on the public. [Tex. Loc. Govt. Code, § 171.004]

#### Disclosure

A Board Member or employee must disclose a Substantial Interest in a business, contract, or real property that would confer a benefit by their vote or decision. The Board Member or employee may not participate in the consideration of the matter subject to the vote or decision. Prior to the vote or decision, a Board Member shall file an affidavit citing the nature and extent of his or her interest with the Board Vice Chair or Ethics Officer. [Tex. Loc. Govt. Code, § 171.004]

A Board Member or employee may choose not to participate in a vote or decision based on an appearance of a conflict of interest and may file an affidavit documenting their recusal.

#### Section 8. Disclosure of Certain Relationships [Tex. Loc. Govt. Code, Ch. 176]

#### Definitions

- (1) A Local Government Officer is defined by Tex. Loc. Govt. Code § 176.001(4). A Local Government Officer is:
- (i) A member of the Board of Directors;
  - (ii) The President/CEO; or

(iii) A third party agent of Capital Metro, including an employee, who exercises discretion in the planning, recommending, selecting or contracting of a vendor.

(2) A Family Member is a person related within the first degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.

(3) A Family Relationship is a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.

(4) A Local Government Officer must file a Conflicts Disclosure Statement (FORM CIS) if:

(i) The person or certain Family Members received at least \$2,500 in taxable income (other than investment income) from a vendor or potential vendor in the last twelve (12) months through an employment or other business relationship;

(ii) The person or certain Family Members received gifts from a vendor or potential vendor with an aggregate value greater than \$100 in the last 12 months; or

(iii) The vendor (or an employee of the vendor) has a Family Relationship with the Local Government Officer.

(5) A vendor doing business with Capital Metro or seeking to do business with Capital Metro is required to file a completed questionnaire (FORM CIQ) disclosing the vendor's affiliations or business relationship with any Board Member or local government officer or his or her Family Member.

#### Section 9. Duty to Report and Prohibition on Retaliation

Board Members and employees have a duty to promptly report any violation or possible violation of this Code of Ethics, as well as any actual or potential violation of laws, regulations, or policies and procedures to the hotline, the Capital Metro Ethics Officer or the Board Ethics Officer.

Any employee who reports a violation will be treated with dignity and respect and will not be subjected to any form of retaliation for reporting truthfully and in good faith. Any retaliation is a violation of the Code of Ethics and may also be a violation of the law, and as such, could subject both the individual offender and Capital Metro to legal liability.

#### Section 10. Penalties for Violation of the Code of Ethics

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

(1) If a Board Member does not comply with the requirements of this policy, the Board member may be subject to censure or removal from the Board in accordance with Section 451.511 of the Texas Transportation Code.

(2) If an employee does not comply with the requirements of this policy, the employee shall be subject to appropriate disciplinary action up to and including termination.

(3) Any individual or business entity contracting or attempting to contract with Capital Metro which offers, confers or agrees to confer any benefit as consideration for a Board Member's or employee's decision, opinion, recommendation, vote or other exercise of discretion as a public servant in exchange for the Board Member's or employee's having exercised his official powers or performed his official duties, or which attempts to communicate with a Board Member or Capital Metro employee regarding details of a procurement or other contract opportunity in violation of Section 5, or which participates in the violation of any provision of this Policy may have its existing Capital Metro contracts terminated and may be excluded from future business with Capital Metro for a period of time as determined appropriate by the President/CEO.



(4) Any individual who makes a false statement in a complaint or during an investigation of a complaint with regard to a matter that is a subject of this policy is in violation of this Code of Ethics and is subject to its penalties. In addition, Capital Metro may pursue any and all available legal and equitable remedies against the person making the false statement or complaint.

Section 11. Miscellaneous Provisions

(1) This Policy shall be construed liberally to effectuate its purposes and policies and to supplement such existing laws as they may relate to the conduct of Board Members and employees.

(2) Within sixty (60) days of the effective date for the adoption of this Code each Board Member and employee of Capital Metro will receive a copy of the Code and sign a statement acknowledging that they have read, understand and will comply with Capital Metro's Code of Ethics. New Board Members and employees will receive a copy of the Code and are required to sign this statement when they begin office or at the time of initial employment.

(3) Board Members and employees shall participate in regular training related to ethical conduct, this Code of Ethics and related laws and policies.

8. **RESERVED**

9. **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](http://www.ethics.state.tx.us). Questions regarding the form should be directed to the Texas Ethics Commission.

10. **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 406.96 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.

11. **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.

12. **CERTIFICATION REGARDING FOREIGN TERRORIST ORGANIZATIONS**

Contractor certifies and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

13. **CERTIFICATION OF PRIME CONTRACTOR PARTICIPATION**

(a) The Prime Contractor certifies that it shall perform no less than thirty percent (30%) of the work with his 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.

**14. 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:

Canon Solutions America, Inc.

Type/Print Name of Signatory:

John Reilly, Senior Vice President

Signature:



Date:

02/ 7 /2019

**EXHIBIT E-Revised-2**  
**CONTRACTUAL TERMS AND CONDITIONS**  
**(SERVICES CONTRACT)**

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**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.
- (l) "FAR" means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (m) "FCPA" means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.
- (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) "Fully Burdened Hourly Labor Rate" means an hourly rate that includes all salary, overhead costs, general and administrative expenses, and profit.

(q) "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.

~~(r) "Manufacturing Materials" mean any completed or partially completed supplies and materials, parts, dies, jigs, fixtures, plans, drawings, information, and contract rights specifically produced or specially acquired by the Contractor for the performance of the Contract.~~

~~(s)~~(r) "Notice of Award" means formal notice of award of the Contract to the Contractor issued by the Contracting Officer.

~~(t)~~(s) "Notice to Proceed" means written authorization for the Contractor to start the Services.

~~(u)~~(t) "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.

~~(v)~~(u) "Proposal" means the offer of the proposer, submitted on the prescribed form, stating prices for performing the work described in the Scope of Services.

~~(w)~~(v) "Services" means the services to be performed by the Contractor ~~under this Contract~~ as described in Exhibit F or otherwise required by this Contract, and includes services performed, workmanship, and supplies furnished or utilized in the performance of the Services.

~~(x)~~(w) "Subcontract" means the Contract between the Contractor and its Subcontractors.

~~(y)~~(x) "Subcontractor" means subcontractors of any tier.

~~(z) "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.~~

(y) "Deliverables" means units of the equipment models ("Equipment"), and licenses to the application software ("Software"), listed in Exhibit A, or as may otherwise be agreed between the parties as "Deliverables" to be supplied under this Contract.

## 2. HYBRID FIXED PRICE CONTRACT

(a) This is a hybrid fixed price Contract for the Services specified and stated elsewhere in the Contract, some elements are indefinite quantity, indefinite delivery and some are definite quantity as referenced below:

### INDEFINITE QUANTITY, INDEFINITE DELIVERY:

(b) Portions of this contract are indefinite-quantity for the supplies or Services specified and stated elsewhere in the Contract. The quantities of ~~supplies and Services~~ copier and printer impressions specified are estimates only and are not purchased by this Contract.

(c) This indefinite quantity, indefinite delivery Contract with respect to copier and printer impressions is subject to the following minimum/maximum paragraph:

(1) Minimum order impressions. The Authority will order generate a minimum of \$1,000 in services under this Contract.

(2) Maximum order impressions. The Authority will order generate a maximum not to exceed the total dollar amount of this Contract.

Each of the parties shall monitor the total impressions generated under this Contract and, if either party at any time believes that, at the rate of impressions being generated, it is reasonably possible that the maximum will be exceeded, the parties will consult and agree on such solution, which may include a Contract amendment increasing the maximum number of impressions, so as to ensure that Contractor's services and the charges hereunder therefor will continue through the end of the Contract Term.

(d) There is no limit to the number of orders that may be placed under this Contract.

(e) The quantities provided by the Authority on the Pricing Schedule for copier and printer impressions are estimates used as a basis for Contract Award and are, therefore, not hereby purchased under the Contract.

### DEFINITE-QUANTITY:

(f) Portions of this contract are definite-quantity that provides for delivery of a definite quantity of specific supplies or Services during a time period that is fixed, with deliveries or performance to be scheduled at designated locations at the time each order is placed under the Contract.

(g) The Authority knows in advance how many total items it will need during the Contract period but is uncertain as to the exact time or the exact amount of its needed deliveries to any given location.

(h) The supplies or Services called for by this type of Contract must be regularly available from the supplier or available after a short lead-time.

## 3. TERM

The term of the Contract shall be three (3) years from the date that the Contract Notice to Proceed is issued to Contractor. 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 three (3) option periods for a twelve (12) month duration each at the option prices set forth in Exhibit A - Pricing Schedule upon written notice to the 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 for work completed and accepted by the Authority, 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](mailto: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; and
- (4) ~~evidence of the acceptance of the supplies or Services by the Authority; and~~
- (5)(4) 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. **RESERVED**

9. **INSURANCE**

(a) The Contractor shall furnish proof of Capital Metro-stipulated insurance requirements specified below. All insurance policies **required below (except Professional Liability)** 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 requirement for Waiver of Subrogation shall be met with production of blanket endorsements.** The Contractor shall furnish to the Authority certificate(s) of insurance evidencing the required coverage and **blanket 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. **Should any of the above described policies of insurance be canceled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to the Authority and tThe Authority shall be named included as an Additional Insured under each policy, except Professional Liability insurance, if required by this Contract. The requirement for additional insured status shall be met with production of blanket endorsements.** All insurance policies shall be written by **reputable** insurance company or companies **acceptable to the Authority** with a current Best's Insurance Guide Rating of **A. + and Class XIII or better.** All insurance companies shall be authorized to transact business in the State of Texas. **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 per occurrence** for Bodily Injury and Property Damage including Products Liability.
- (2) **Automobile Liability Insurance** covering all owned, hired and non-owned automobiles used in connection with the work with limits of not less than One Million and No/100 Dollars (\$1,000,000) Combined Single Limit for Bodily Injury and Property Damage.
- (3) **Statutory Workers' Compensation** coverage in the State of Texas. Employer Liability Insurance with minimum limits of One Million and No/100 Dollars (\$1,000,000).
- (4) **Professional Liability Insurance** covering negligent acts, errors and omissions arising from the contractor's work to pay damages for with for which the Contractor may become legally obligated. Minimum Limits of liability shall be no less than One Million and No/100 dollars (\$1,000,000) on an annual aggregate basis.

(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 **(except Professional Liability insurer)** 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. **The requirement for Waiver of Subrogation status shall be met with production of blanket endorsements.**

(d) Each insurance policy **(except Professional Liability)** shall contain the **following provisions and/or** endorsements: PRIMARY AND NON-CONTRIBUTORY 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 blanket endorsements shall be ~~evidenced on~~ included with 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 ~~Sub~~Contractor shall **be liable for its Subcontractor's maintain** 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. 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)(g)** 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)(h)** 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.**

## **10. 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.

## **11. REMOVAL OF ASSIGNED PERSONNEL**

The Authority may require, in writing, that the Contractor remove from the Services any employee or Subcontractor of the Contractor that the Authority deems inappropriate for the assignment; **provided however that (i) Contractor may refuse the removal of any employee if (a) the employee does not pose a physical threat, or otherwise jeopardize, the safety of Authority staff or invitees; (b) the employee and Contractor, with respect to the employee, are in compliance with Section 17 of this Exhibit E and (c) Contractor reasonably believes that doing so would expose it to actual legal liability, and (ii) except in emergency situations, the Authority shall not require the removal of any employee or Subcontractor except upon prior consultation with Contractor to determine if the situation can be rectified.**



**12. 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.

**13. 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.

**14. 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.

**15. 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, and any other Subcontractors performing incidental Services (such as equipment deliveries), so long as Contractor notifies the Authority of such Subcontractors. Any substitution in such Subcontractors, associates, or consultants (other than those providing incidental Services) will be subject to the prior approval of the Authority, not to be unreasonably withheld.

**16. 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.

**17. 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 the personnel assignments who will be providing Services on-site at facilities of the Authority, including those to be performed by Subcontractors, such approvals not to be unreasonably withheld or delayed. Contractor will ensure the on-site employees assigned to this contract will receive at least the hourly wages specified in the contractor's proposal incorporated into this Contract and that the employees will receive the benefits specified in the proposal including but not limited to health insurance and paid sick leave.

(b) The Contractor certifies that the Contractor, and each Subcontractor for which approval by the Authority is required, 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 on-site at any Authority facility 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 on-site 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 (subject to redaction of personally identifiable information or other non-disclosable information) 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:

Offense Type	Action Required
<b>Crimes Against the Person (other than sex crimes)</b>	
Felony	Submit to Capital Metro for review if less than 10 years from date of <b>release from confinement</b>
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of <b>conviction</b>

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of <b>conviction</b>
<b>Crimes Against the Person - Sex Crimes/Registered Sex Offenders</b>	
ALL	Submit to Capital Metro for review
<b>Crimes Against Property</b>	
Felony	Submit to Capital Metro for review if less than 10 years from date of <b>release from confinement</b>
<b>Moral Crimes, including, but not limited to: Drug Crimes, Prostitution, Bigamy, Illegal Gambling, Child Pornography</b>	
Felony	Submit to Capital Metro for review if less than 10 years from date of <b>release from confinement</b>
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of <b>conviction</b>
Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of <b>conviction</b>
<b>Driving Offenses</b>	
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 Moving Violations	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.

**18. 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. All

requests for new and replacement badges must be submitted in writing 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 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.

**19. 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.

**20. 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 **materially** fails to perform the Services within the time specified herein or any extension thereof; or

(2) if the Contractor **materially** fails to perform any of the other provisions of this Contract;

and in either such case Contractor does not cure such failure within a period of ~~ten (10)~~ thirty (30) 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 reasonable excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this Contract to the extent, if any, it has not been terminated under the provisions of this subparagraph.

(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 reasonable 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 reasonable 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 reasonable 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 subparagraph, 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)~~(d) 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)~~(e) 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.

**21. TERMINATION FOR CONVENIENCE**

(a) The Authority may, whenever the interests of the Authority so require, terminate the Services under 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. For the avoidance of doubt, the Authority does not have the right under this Section to terminate its obligations under this Contract with respect to Deliverables.

(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:

(1) Contract prices for supplies accepted under the Contract;

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

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

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

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

## 22. CONTRACTOR CERTIFICATION

The Contractor certifies that the fees in this Contract 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.

## 23. INTELLECTUAL PROPERTY PROVISIONS

(a) As between the Contractor and the Authority, the Works and no Intellectual Property Rights or rights thereunder will be transferred or granted pursuant to this Contract, other than license rights under software included within the Deliverables and licensed to the Authority pursuant to the software developers' end-user license agreements. Authority's data, content and information processed or stored on Contractor equipment and derivatives versions of such data, content and information, in any form or format (collectively, "Authority Data") are and will remain the sole property of the Authority and the Authority retains all rights, title and interest therein and thereto. Contractor and its employees, Subcontractors and agents will not use, process, store or handle Authority Data except in the performance of Services under this Contract. ~~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 INVOLVING INFRINGEMENT, ANY THIRD-PARTY RIGHTS, UNITED STATES PATENTS, COPYRIGHTS, TRADE, AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT;** provided, however, that the Authority shall promptly notify the Contractor, in writing, of such claim, the Authority shall furnish copies of all letters and other documents relating to the allegation of infringement received by the Authority, and the Contractor shall be given full and sole authority to defend and settle such claim, action or allegation of infringement. If the Contractor requests, the Authority agrees, at the Contractor's expense, to assist and/or cooperate with the Contractor as the Contractor reasonably believes is necessary in such defense and/or settlement. Anything herein to the contrary notwithstanding, the Contractor shall not be responsible to the extent that the infringement claim arises out of (a) any addition to or modification of any Equipment without the Contractor's written authorization; or (b) any combination of the Equipment with other hardware or software for which the Equipment was not designed; (c) any throughput processed in connection with the Equipment; or (d) use of the spare parts other than in connection with the unit of Equipment. If any infringement claim is brought against the Authority or the Contractor, or if in the Contractor's reasonable opinion a unit of Equipment is likely to become a subject of a claim of infringement or violation of any patent, the Contractor shall be entitled at its option: (x) to procure for the Authority the right to continue the use of the Equipment at the Contractor's expense by acquiring a license in the name of, or covering use by, the Contractor or one of Contractor's affiliated companies, or (y) to replace or modify the Equipment so as not to infringe such third party's rights while conforming, as closely as possible to the original specifications and, in the case of replacement, terminate this Agreement as to the affected Equipment. ~~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.

#### **24. 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.

#### **25. 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.~~

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

~~(c) No claim under this 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 subparagraph 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.~~

**27. 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.

**28. 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.

**29. 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.

**30. 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](http://www.ethics.state.tx.us). The questionnaire shall be sent to the Authority's Contract Administrator.

**31. 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.

**32. 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.

**33. REQUEST FOR INFORMATION**

(a) The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract which is confidential to the Authority or which specifically identifies or relates to the Authority for public dissemination or, except in the ordinary course of Contractor's business, to any party other person 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. "Confidential" information of the Authority for this purpose means:

(i) Any information concerning the Authority, information which is provided by the Authority to the Contractor, and all of the information and plans related to the Contract, which are not published; and

(ii) All Authority Data.

(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.

**34. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

(a) All documentation related to or prepared submitted to the Authority 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 and submitted to the Authority as a requirement of 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.

(c) Contractor shall be permitted, notwithstanding the Authority's ownership under clauses (a) and (b) above, to use any of the information in any of the documentation, reports, data, graphics and other materials in the ordinary course of its business.

**35. 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. For any claims or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Contractor's liability for damages of any kind to the Authority shall be limited to the total amount paid to Contractor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Contractor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

**36. 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.

**37. CLAIMS**

In the event that any claim, demand, suit, or other legal action is threatened, made or brought by any person, firm, corporation, or other entity against the Contractor arising out of this Contract which may have a materially adverse effect on the Authority or be of public interest as it relates to the Authority, the Contractor shall give written notice thereof, to the Authority within three (3) working days as soon as practicable 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 E. 5th Street, Austin, Texas 78702.

**38. 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.

**39. 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.

**40. 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.

**41. 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.

**42. 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) TO THE EXTENT 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 **IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT.**

(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 **REASONABLY** 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.

#### 43. 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.~~

~~(e)(b)~~ 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)(c)~~ 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)(d)~~ The Contractor agrees to provide sufficient access to the Authority and its contractors to inspect and audit ~~records and information related~~ all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to performance of this Contract as reasonably may be required. Authority shall provide Contractor ten (10) business days' notice prior to inspecting Contractor's records.

~~(f)(e)~~ 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)(f)~~ 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. If an audit pursuant to this paragraph reveals that the Authority has underpaid any amounts properly chargeable under this Contract, the Contractor may invoice the Authority for such underpaid amounts.

~~(h)(g)~~ This paragraph will survive any termination or expiration of this Contract.

#### 44. 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 reasonable 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.

**45. 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 negligence, wrongful act, omission or intentional misconduct of 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.

**46. 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.

**47. 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.

**48. 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.

**49. 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.

**50. 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. Exhibit D – Small Business Enterprise Program/SBE
- 6. Other provisions or attachments to the Contract, including Contractor's proposal

**51. 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.

**52. VARIATION IN ESTIMATED QUANTITY**

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

**53. 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.

**54. 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 e-mail 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)(c)~~ 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)(d)~~ 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)(e)~~ 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)(f) 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)(g) 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)(h) 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, other than an assignment solely for financing purposes or an assignment to any other wholly-owned subsidiary of Contractor’s ultimate parent company, Canon, Inc. Any assignee under an assignment, other than an assignee for financial purposes, must agree in writing to assume Contractor’s obligations, responsibilities, and duties under the Contract as of the effective date of the assignment. 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)(i) 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)(i) 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)(k) This Contract is subject to the Texas Public Information Act, Tex. Gov’t Code, Chapter 552.

(m)(l) 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)(m) 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)(n) 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)(o) 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)(p) 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)(q) Time is of the essence for all delivery, performance, submittal, and completion dates in this Contract.

**55. 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.

**56. PERFORMANCE DISINCENTIVES**

A “disincentive” is a fixed dollar amount for the Contractor’s failure to perform its obligations under this contract for which the actual amount is difficult or incapable to estimate and is a reasonable forecast of just compensation for such failure; also, “penalty: under Texas Transportation Code Section 451.137, which amount shall be deducted from

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amounts owing Contractor under the Contract. Capital Metro will track deficiencies and provide Contractor a monthly report on findings.

Disincentives will be assessed as follows whenever the following conditions are found:

<b>Condition</b>	<b>Self-Service Printers/Copiers Not Functioning</b>	<b>On-Site Business Center Equipment for printing, copying, collating, stapling, punching, tabbing, binding, and scanning</b>	<b>Failure to Meet Mail and Lost and Found Deliveries as scheduled</b>	<b>Staff Vacancy</b>
<b>Acknowledge or Report*</b>	<b>30 minutes</b>	<b>30 minutes</b>	<b>1 hour</b>	<b>2 weeks prior to vacancy when planned. Within 2 hours when un-planned</b>
<b>Response</b>	<b>1 hour</b>	<b>1 hour</b>	<b>2 hours</b>	<b>Fill on temporary basis within 5 business days</b>
<b>Recovery</b>	<b>24 hours</b>	<b>2 hours</b>	<b>Correct within 4 hours</b>	<b>Fill with regular staff member within 45 calendar days</b>
<b>Disincentive Assessed</b>	<b>\$100 per normal business hour until the equipment is repaired and back in service or an acceptable backup device is provided</b>	<b>\$200 per normal business hour until service is provided</b>	<b>\$200 per normal business hour until issue is corrected</b>	<b>\$200 per day past the response and recovery times specified</b>

Condition	Self-Service Printers/Copiers Not Functioning	On-Site Business Center Equipment for printing, copying, collating, stapling, punching, tabbing, binding, and scanning	Failure to Meet Mail and Lost and Found Deliveries as scheduled	Staff Vacancy
Canon Definition	Fleet Devices (All Multi-Function devices - B/W & Color)	Production Devices (B/W units with rated speeds 105 pages per minute or faster and/or Graphic production color units )	Mail Services	Staffing
Acknowledge or Report*	Within 1 hour	Within 30 minutes	Within 1 hour	2 weeks prior to vacancy when planned. Within 2 hours when un planned
Response	CSA will commit to a fleet average response of 4 hours, over 4 fixed quarterly intervals per year. Response time, as noted above, shall be calculated from the time the customer call is placed with CSA Dispatch department, until the time the Technician arrives at the individual location. Response times are calculated between 8:30am and 5:00pm, Monday through Friday, excluding CSA holidays. For the individual location which has multiple machines and active service calls, the Technician's arrival shall stop the response time calculation for all open service calls at that location.	CSA will commit to a fleet average response of 4 hours, over 4 fixed quarterly intervals per year. Response time, as noted above, shall be calculated from the time the customer call is placed with CSA Dispatch department, until the time the Technician arrives at the individual location. Response times are calculated between 8:30am and 5:00pm, Monday through Friday, excluding CSA holidays. For the individual location which has multiple machines and active service calls, the Technician's arrival shall stop the response time calculation for all open service calls at that location.	Within 2 hours	Fill on temporary basis within 5 continuous business days
Recovery	24 continuous business hours	24 continuous business hours	Next business day	Fill with regular staff member within 60 calendar days
Disincentive Assessed	\$100 per business day until the equipment is repaired and back in service or an acceptable backup device is provided	\$100 per business day until the equipment is repaired and back in service	\$200 per normal business hour until issue is corrected	\$100 per day past the response and recovery times specified

\*Contractor is expected to report to the Capital Metro Project Manager within the timeframes listed if the issue is identified by the Contractor prior to notification by Capital Metro staff.



**57. DELIVERABLES PROVISIONS**

(a) Deliveries and Installation. All delivery and installation shall be at no additional charge, unless special rigging is required, or unless delivery or installation is requested for outside Contractor's regular delivery hours. Installation of Software, if requiring professional services from Contractor, may require and be subject to a separate agreement between Contractor and the Authority. Contractor will use commercially reasonable efforts to deliver Deliverables, and complete installation thereof, by the date(s) specified in this Contract or the applicable Deliverables Order; provided that Contractor shall have the right, in the event of equipment shortages, to limit delivery of ordered quantities. If Contractor is unable to fill any Order within the time frame requested by the Authority, the Authority shall have the right in its sole reasonable discretion, to cancel the Order with no further obligation to Contractor thereunder, provided that notice of cancellation is received by Contractor prior to its commencing of shipment thereunder. Such cancellation shall be the Authority's sole and exclusive remedy in the event of delay and delivery, unless the delay is materially in excess of the expected delivery date that Contractor had advised to the Authority at the time the Authority issued the Order.

(b) Meter Readings. Contractor will be responsible for monitoring meter readings in order to accurately monitor performance and invoice the Authority. However, if the Authority restricts Contractor's on-site employees from accessing meter readings for any reason:

(i) It will be Authority's responsibility to provide accurate meter readings within ten (10) days of the end of each relevant period (monthly, unless specified otherwise in the Contract or the relevant Deliverables Order) to Contractor.

(ii) Authority may, at its option, enter periodic meter readings on Contractor's website in the manner as provided therein.

(iii) If Contractor does not receive timely meter readings from Authority, Authority shall pay invoices that reflect Contractor's estimates of the meter reading. Contractor reserves the right to verify the accuracy of any meter reading from time to time, and upon verification it will invoice Authority for any shortfall in the invoice for the next periodic billing cycle, or apply a credit to the extent that invoiced estimates exceeded verified usage.

(c) With respect to Deliverables provided by Contractor to Authority (other than any Equipment provided on a purchase basis):

(i) Authority agrees neither to make any alteration in the Equipment nor to remove it from the location where installed by Contractor without prior written approval of Contractor.

(ii) Authority shall bear all risk of loss or damage to Equipment while on Authority's premises, except if caused by the actions or omissions of Contractor or Contractor's employees, subcontractors or agents.

(iii) Authority further agrees to return each unit of Equipment upon the expiration or earlier termination of the lease term of the Equipment in the same condition as when received except for reasonable wear and tear.

(iv) Title to the Deliverables shall remain at all times with Contractor, and Authority agrees that the Contractor plaque affixed to the Equipment will not be removed.

(v) Authority agrees to keep the Deliverables free from all liens, security interests and encumbrances. Contractor is hereby authorized to file a financing statement to evidence its ownership in the Deliverables in the possession of Authority.

(d) Software is provided pursuant to the end-user license agreements required by the owners or developers thereof, and Authority agrees that its use of all Software shall at all times be subject to and in compliance with the terms and conditions of such end-user license agreements. Unless separately otherwise agreed, Authority's license to use any Software shall terminate upon the expiration or termination of the Usage Term of the related Equipment or the Software, as applicable. Authority acknowledges and agrees that installation of and/or other support services for certain Software will be conditioned upon execution by Authority of a statement of work and Contract modification

(under this Contract, or as a separate agreement) detailing, among other things, Authority responsibilities, Software configurations, installation project schedules and requirements, as may be reasonably requested by Contractor or the developer or supplier of the Software. Such Contract modification will also set forth Contractor's responsibilities with respect to the Equipment and Software. With respect to the Software, Contractor will not and will not knowingly permit any third party to (a) remove, deface, bypass, over-ride or otherwise defeat any product identification, copyright notices, trademarks, restricted rights or other proprietary restrictions, or any license administration or enforcement mechanisms contained in or affixed to the Software, (b) use the Software for any purpose other than as expressly permitted in the applicable end-user license agreement, (c) reverse engineer, decompile, disassemble, trace or translate the Software, or do anything to attempt to discover the Software's source code, (d) prepare any derivative works based on the Software, (e) copy the Software, or (f) modify, adapt or alter the Software.

(e) The Deliverables are provided subject to such warranties and license terms as are provided by the manufacturer or the relevant third-party software provider as are packaged or otherwise provided with the Deliverable. WARRANTIES, AND WARRANTIES IN THIS CONTRACT RELATING TO MAINTENANCE SERVICES, ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THE MAINTENANCE SERVICES, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT THE FURNISHING OF MAINTENANCE SERVICES UNDER THIS CONTRACT DOES NOT ASSURE UNINTERRUPTED OPERATION AND USE OF THE DELIVERABLES. HOWEVER, INTERRUPTED SERVICES ARE SUBJECT TO APPLICABLE PERFORMANCE DISINCENTIVES IN SECTION 56.

(f) Data Security. Authority acknowledges that the hard drive(s) on the Equipment, including attached devices, may retain images, content or other data during normal operation of the Equipment ("Data"). Authority acknowledges that Contractor is not storing Data on Authority's behalf and that exposure or access to the Data by Contractor, if any, is purely incidental to the Services. Neither Contractor nor any of its affiliates has an obligation to erase, overwrite or otherwise sanitize Data upon Authority's return of the Equipment to Contractor or any third-party and, Authority is solely responsible for: (i) its compliance with applicable law and legal requirements pertaining to data privacy, security, retention and protection; and (ii) all decisions related to securing, erasing or overwriting Data. Without limiting the foregoing, Authority should, (a) enable the Hard Disk Drive (HDD) data erase functionality that is a standard feature on certain Equipment and/or (b) prior to return or other disposition of the Equipment, utilize the HDD (or comparable) formatting function (which may be referred to as "Initialized All Data/Settings" function) if found on the Equipment to perform a one pass overwrite of Data or, if Authority has higher security requirements, Authority may purchase from Contractor at current rates an available option for the Equipment, which may include (x) an HDD Data Encryption Kit option which disguises information before it is written to the hard drive using encryption algorithms, (y) a HDD Data Erase Kit that can perform up to a 3-pass overwrite of Data (for Equipment not containing data erase functionality as a standard feature), or (z) a replacement hard drive (in which case Authority should properly destroy the replaced hard drive).

(g) The Contractor will use commercially reasonable efforts to reasonably assist the Authority, if requested, to adopt and implement facility security to protect against theft and unauthorized access, disclosure and use of the Authority Data, to the extent within the Contractor's access, possession or control, and cooperate with the Authority and any contactors it designates, in its performance of these obligations.

**EXHIBIT F-REVISED-1**  
**SCOPE OF SERVICES**  
**BUSINESS CENTER SERVICES**

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**1.0 PURPOSE OF PROCUREMENT**

- (a) The Contractor shall provide all labor, supervision, supplies, equipment, transportation, and material to perform the management of an on-site Business Center at Capital Metro's Main Office located at 2910 E. 5<sup>th</sup> Street.
- (b) The Contractor shall be responsible for the management of the on-site Business Center that will include the following required services:
- (1) Copy services (including color copying).
  - (2) Copier, fax and scanner maintenance services.
  - (3) Mail services (Internal & External).
  - (4) Courier services.
  - (5) Scanning/Optical Character Reader (OCR)/imaging/indexing.
  - (6) Boardroom Furniture Arrangement.

**2.0 BACKGROUND**

**2.1 Current Business Center**

- (a) The current Business Center was established in November 2003. The current Contractor maintains office hours from 7:00 a.m. to 5:00 p.m. Monday through Friday, with the exception of CMTA observed holidays. The observed holidays are: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.
- (b) The current Contractor provides through a lease and maintains the equipment listed in Attachment 1. The current Contractor is responsible for providing all services, equipment, and materials necessary to perform this service.
- (c) Historic, current and estimated volumes and amounts provided in this Scope of Services are for information purposes only, and Capital Metro makes no guarantees as to volumes under the Contract.

**2.2 Required Services**

- (a) The Contractor will be required to provide all leased equipment to Capital Metro of the same or better functionality as the equipment listed in Attachment 1. The equipment will be owned by the Contractor and used exclusively to perform services to Capital Metro under this contract. The Contractor shall not replace any equipment without the express written consent of Capital Metro. Any replacements during the term of the contract must be co-terminus and lease terms for copiers will not go beyond the base term of the contract.
- (b) The Contractor is responsible for providing **all paper and other** supplies necessary for **operation of the copiers and printers, faxes, and scanners** as a requirement under this Contract.
- (c) The Contractor is responsible for all incoming and outgoing mail. A mail pick up is made for a customer drop box located at Capital Metro's Main Office. The volume for internal and U.S. Postal mail typically is 2-3 U.S. Postal containers, but periodically may increase for high volume mailings. The Contractor is also responsible for incoming

and outgoing overnight packages. The receiving center at Capital Metro's Main Office receives packages (i.e. FedEx). The contractor must provide a tracking system for receipt and delivery of packages from the receiving center.

(d) The Contractor will make courier deliveries to seven other CMTA locations (Attachment 2) daily at 10:00 a.m. and 3:00 p.m. Lost and Found items are delivered to the appropriate facility by the courier.

(e) The Contractor will perform imaging scanning. The Contractor may be required to scan and index historical records into Capital Metro's record management system Microsoft SharePoint.

(f) The Contractor will be required to provide Boardroom furniture arrangement on an as needed basis to Capital Metro employees. Over the past year, there has been a monthly average of 40 setups.

### **3.0 PROJECT GOALS**

Capital Metro has business and technical goals that it wishes to achieve with this project. The Contractor's efforts under this Contract shall be directed at assisting CMTA in reaching the following Business Center goals.

#### **3.1 Business Goals**

(a) Continue to improve productivity of employees through the outsourcing of the functions to be provided in the business center.

(b) Provide these services in a cost-effective manner.

#### **3.2 Technical Goals**

(a) Maintain energy efficient equipment (copiers, fax machines and printers) cost effectively.

(b) Provide the capability of electronic submission and management of business center requests.

(c) Provide the capability of receiving and routing faxes through a software solution.

(d) Provide an effective printing infrastructure.

### **4.0 SCOPE OF SERVICES**

#### **4.1 Business Center**

Capital Metro will provide the space and power within its 2910 E. 5<sup>th</sup> Street location to house the Business Center. The Contractor will operate from a centralized location. All equipment should maintain an energy efficient standard. The Contractor will provide all business center requirements including staff, other necessary locations, equipment, and consumables to provide the following required services:

(a) Centralized copy services (including color copying).

(b) Self-service copy (B/W) and fax areas.

(c) Self-service scanning services (including OCR and color).

(d) Departmental copy (B/W) machines appropriate for high volume areas.

(e) Mail services.

(f) Courier services.

Note: Services provided under items (a) through (d) above must integrate with CMTA Office 365 and SharePoint.

#### 4.2 Support and Maintenance Requirements

Contractor will provide the following support and maintenance for the Business Center:

- (a) Contractor must provide a sufficient number of proficient, trained/skilled personnel to staff the center as follows: 7:00 am to 5:00 pm, Monday – Friday, excluding Capital Metro observed holidays. The observed holidays are: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.
- (b) Maintenance on all equipment, including copiers, fax machines, scanners, mail equipment and color printers.
- (c) Contractor must provide a back up system service in the event of system service or equipment failures for longer than 3 hours as identified in Section 5.2.
- (d) The Contractor shall not interrupt service to customers for any reason including during the Contractor's employees' lunch and break periods. The Contractor shall vary employee work schedules to ensure full coverage during the hours of operation stated above.
- (e) The contractor shall relocate leased equipment within the same facility at Capital Metro's request within ten (10) business days of the request. Equipment moves between facilities will be limited to two (2) moves per year for MFD devices.
- (f) Assist Capital Metro staff with troubleshooting copier and printer issues to avoid productivity problems or work interruption.

#### 4.3 Electronic Request System

The Contractor will provide an electronic request system, accessible to all Capital Metro users, for entering and tracking the submission of jobs to the Business Center.

#### 4.4 Copy Services

The following services are required with reasonable response times. The response time required on any project will be established by the ordering department at the time of the order. Most orders will require same day delivery.

- (a) Centralized services.
- (b) Self-service area.
- (c) Departmental service in high volume areas.
- (d) Collating, stapling and finishing.
- (e) Tabbing.
- (f) Binding, comb and tape.
- (g) Color copying.
- (h) Reducing/Enlarging.
- (i) Maintenance of all copiers.
- (j) Copier supplies.
- (k) Transmittal of jobs directly from Capital Metro personal computers to Business Center for copy services.

- (l) Use of 8 ½" x 11", 8 ½" x 14", and 11" x 17" 20# paper.
- (m) Use specialty paper such as labels, card stock, photo paper (glossy and matted).

**4.5 Centralized Color Print Services**

- (a) Network accessibility.
- (b) High resolution color with 600 dpi printing.
- (c) Print speed of 30 - 32 pages per minute (B/W or Color).
- (d) Ability to accommodate, without operator intervention, paper sizes of 8 ½" x 11", 8 ¼" x 14", and 11" x 17".

**4.6 Scanning / Imaging**

- (a) Day-to-day scanning and imaging using OCR format.
- (b) Ability to accommodate 8 ½" x 11", 8 ½" x 14", 11 x 17", and 24" x 36" documents.
- (c) Ability to scan color graphics into jpeg and bitmap format.
- (d) Resolution up to 1024 X 768.
- (e) Ability to scan text documents from paper to electronic file format and convert utilizing OCR software.
- (f) Transmittal of jobs directly to requestor either through email or placement on network drive.
- (g) 95% or better accuracy in converting text.
- (h) Centralized services.
- (i) Self-service area.

**4.7 Mail Services**

The Contractor shall provide complete mail room services. The Contractor will provide mailroom equipment necessary to process mail and will provide supplies and maintain and repair the equipment as needed.

- (a) Pick up and delivery of Business Center jobs to all Capital Metro locations and departments.
- (b) Pick up and delivery of all internal and external mail to all Capital Metro locations, departments and U.S. Post Office. Internal pick up and delivery of mail at the Main Office will be performed at a minimum at 10:00 a.m. and 3:00 p.m.
- (c) Processing of all external and internal mail (i.e. postage, packaging, delivery, etc.).
- (d) Postage for U.S. Post Office will be pass through charges to Capital Metro based on actual usage.

**4.8 Courier Services**

- (a) Deliver packages to various locations in the Capital Metro Service Area.
- (b) Deliver lost and found articles between Capital Metro locations.



The following service is **optional**:

- (c) Deliver tickets and passes to outlets (current outlet locations are provided in Attachment 3).

#### **4.9 Indexing Historical Documents into Records Management System**

On occasion, Capital Metro will require scanning of historical documents and indexing of the documents into the records management system. Such services must integrate with the Capital Metro SharePoint application.

#### **4.10 Boardroom Furniture Arrangement**

- (a) Move tables and chairs to standard setup not later than one hour before Board meetings, and not earlier than two hours before Board meetings.
- (b) Restore tables and chairs to standard setup not later than 8:00 a.m. on the next business day after Board meetings.
- (c) Arrange board room tables and chairs on an as need basis. Business Center personnel shall support CMTA personnel upon request in setting up routine meetings. Contractor shall be responsible for establishing procedures for requesting this service.

#### **4.11 Specialty Printing**

Printing and maintaining supplies of Capital Metro letterhead and standard mailing envelopes.

#### **4.12 Training**

The contractor will train end-users on device operation promptly and thoroughly. Additional training will be provided upon request at no additional charge to CMTA.

#### **4.13 Deliverables**

Deliverables for the Business Center shall be:

- (a) Successful implementation of the business center ~~within thirty (30) days of Notice to Proceed~~ no later than August 11, 2019.
- (b) Implementation of electronic request system.
- (c) Detailed document on strategy and recommendations for effective printing services.
- (d) Monthly reports or services and volumes by Capital Metro Department numbers. Reports will be provided in electronic format accessible from desktop computers. Reports must capture volume by printing device, location and Capital Metro department number. The reports will also include information required for billing and invoice reconciliation and will be due by the 15<sup>th</sup> day of the month following the end of the prior month.

#### **4.14 Contractor Responsibilities – Business Center**

- (a) Be an active partner with Capital Metro to assure success for the Business Center.
- (b) Provide a single point of contact for all communication regarding work under this Contract.
- (c) Submit to Capital Metro's Contract Administrator a signed letter stating the employee is aware of and will observe the confidentiality requirements of Capital Metro ~~"Confidentiality Agreement"~~ in a form provided by Capital Metro for each employee before the employee begins working on Capital Metro's account.

- (d) Provide appropriate vehicle(s) including all maintenance and gas for required delivery services.
- (e) Be responsible for receiving prior written approval from the Capital Metro contract administrator for all additions to staff and for after hours access.
- (f) Dress in a professional manner that complies with Capital Metro's dress code policy.
- (g) Redo work rejected by Capital Metro staff at no additional cost to Capital Metro.
- (h) Be responsible and held liable for Capital Metro original physical documents while in possession during scanning and/or any other activities.
- (i) Develop and maintain detailed project plans and time-lines for the Business Center implementation.
- (j) Coordinate all tasks with the designated Capital Metro Project Manager.
- (k) Develop a communication plan to communicate to all employees the business center services to be provided and how to access those services.
- (l) Provide back-up plan should equipment failure occur.
- (m) Develop and provide a customer satisfaction survey on an annual basis.

~~(n) Be responsible for the destruction of hard drives at the time equipment is replaced or removed from Capital Metro service. The Contractor will remove the hard drive from the equipment and dispose of the hard drive properly and in a manner that destroys the hard drive and renders all stored data as non-readable/non-retrievable. This service will be provided at no additional cost to Capital Metro. Proof of concept using Disk Encryption and Hard Disk Over-Write features and showing that no retrievable data is left on the MFP will suffice in lieu of physical removal (and replacement) of the drives.~~

(o) Tag all convenience copiers and printers with an ID number and a telephone number to call for service and supplies. This information must be displayed in a location easily visible by the machine operator.

#### **4.15 Capital Metro Responsibilities – Business Center**

- (a) Provide a project manager who will act as primary point of contact.
- (b) Allow the contractor's employees appropriate access to the premises, facilities, systems and Capital Metro staff members assigned to the project.
- (c) Provide adequate space, electricity, PCs, and phones with which to work.
- (d) Provide designated parking for up to two Contractor delivery vehicles.

#### **4.16 Additional Optional Services**

Based on the Contractor's understanding of Capital Metro's Business Center needs, optional services related to the goals of the Business Center may be proposed by the Contractor with detailed explanations of the benefits and costs of the services.

### **5.0 PERFORMANCE EXPECTATIONS AND DISENCENTIVES**

The availability and reliability of the services performed by the Business Center contractor are critical to the efficiency and productivity of Capital Metro departments. The Contractor is expected to adhere to the following levels of service. Disincentives may be assessed for failure to timely address service issues as defined below.

**5.1 Performance Expectations**

(a) Service Calls for Equipment Failures: All service calls for equipment failures will be **acknowledged within one business hour and** responded to within **one four** business hours. This requires a certified technician or equal has examined the machine on site and has attempted to repair the machine. If parts are required, these parts must be available allowing for installation within 24 hours. These services will be provided at no extra charge to Capital Metro.

(b) Service History Problem Replacement: Equipment that develops a history of service problems will be replaced with comparable replacement units at no additional cost to Capital Metro. As a guideline for this provision, a device that has been out of service for more than twenty-four (24) hours in a six-month period will be replaced by the Contractor if requested by Capital Metro. The replacement unit must provide the same or better functionality. Capital Metro will have the final decision on replacement of equipment after consulting with the Contractor.

(c) End-User Surveys: The Contractor will conduct "end-user" surveys once a year. The goal of these surveys will be to identify and monitor specific needs of Capital Metro customers as well as the level of satisfaction. Improvements will be implemented when needed including equipment redistribution, upgrades, additions and deletion of equipment. Improvements that are implemented as a result of these surveys will be tracked.

(d) Quality of Work: Capital Metro has the right to reject any work performed by the Contractor. All rejected work will be redone promptly at no additional cost to Capital Metro.

(e) Availability of Contractor Staff: Contractor is expected to provide adequate staff to operate the Business Center during the hours specified in the contract and to notify the Capital Metro Project Manager at least two weeks in advance of staff changes. In the event of unexpected staff changes, the Capital Metro Project Manager will be advised within 2 business hours of the change. The Contractor's primary contact for the on-site Business Center will be available by office phone or cell phone during normal Business Center hours. If staffing falls below the levels specified in the contract, Contractor shall fill the vacancy within **forty-five (45) sixty (60)** calendar days. For each day the position remains vacant, CMTA shall be issued a rebate equal to the cost of the salary and benefits for the open position beginning on day one (1) of the vacancy.

**5.2 Performance Disincentives**

A "disincentive" is a fixed dollar amount for the Contractor's failure to perform its obligations under this contract for which the actual amount is difficult or incapable to estimate and is a reasonable forecast of just compensation for such failure; also, "penalty: under Texas Transportation Code Section 451.137, which amount shall be deducted from amounts owing Contractor under the Contract. Capital Metro will track deficiencies and provide Contractor a monthly report on findings.

Disincentives will be assessed as follows whenever the following conditions are found:

<b>Condition</b>	<b>Self-Service Printers/Copiers Not Functioning</b>	<b>On-Site Business Center Equipment for printing, copying, collating, stapling, punching, tabbing, binding, and scanning</b>	<b>Failure to Meet Mail and Lost and Found Deliveries as scheduled</b>	<b>Staff Vacancy</b>
<b>Acknowledge or Report*</b>	<b>30 minutes</b>	<b>30 minutes</b>	<b>1 hour</b>	<b>2 weeks prior to vacancy when planned. Within 2 hours when un-planned</b>

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

<b>Response</b>	1 hour	1 hour	2 hours	Fill on temporary basis within 5 business days
<b>Recovery</b>	24 hours	2 hours	Correct within 4 hours	Fill with regular staff member within 45 calendar days
<b>Disincentive Assessed</b>	\$100 per normal business hour until the equipment is repaired and back in service or an acceptable backup device is provided	\$200 per normal business hour until service is provided	\$200 per normal business hour until issue is corrected	\$200 per day past the response and recovery times specified

Condition	Self-Service Printers/Copiers Not Functioning	On-Site Business Center Equipment for printing, copying, collating, stapling, punching, tabbing, binding, and scanning	Failure to Meet Mail and Lost and Found Deliveries as scheduled	Staff Vacancy
Canon Definition	Fleet Devices (All Multi-Function devices - B/W & Color)	Production Devices (B/W units with rated speeds 105 pages per minute or faster and/or Graphic production color units)	Mail Services	Staffing
Acknowledge or Report*	Within 1 hour	Within 30 minutes	Within 1 hour	2 weeks prior to vacancy when planned. Within 2 hours when un planned
Response	CSA will commit to a fleet average response of 4 hours, over 4 fixed quarterly intervals per year. Response time, as noted above, shall be calculated from the time the customer call is placed with CSA Dispatch department, until the time the Technician arrives at the individual location. Response times are calculated between 8:30am and 5:00pm, Monday through Friday, excluding CSA holidays. For the individual location which has multiple machines and active service calls, the Technician's arrival shall stop the response time calculation for all open service calls at that location.	CSA will commit to a fleet average response of 4 hours, over 4 fixed quarterly intervals per year. Response time, as noted above, shall be calculated from the time the customer call is placed with CSA Dispatch department, until the time the Technician arrives at the individual location. Response times are calculated between 8:30am and 5:00pm, Monday through Friday, excluding CSA holidays. For the individual location which has multiple machines and active service calls, the Technician's arrival shall stop the response time calculation for all open service calls at that location.	Within 2 hours	Fill on temporary basis within 5 continuous business days
Recovery	24 continuous business hours	24 continuous business hours	Next business day	Fill with regular staff member within 60 calendar days
Disincentive Assessed	\$100 per business day until the equipment is repaired and back in service or an acceptable backup device is provided	\$100 per business day until the equipment is repaired and back in service	\$200 per normal business hour until issue is corrected	\$100 per day past the response and recovery times specified

\*Contractor is expected to report to the Capital Metro Project Manager within the timeframes listed if the issue is identified by the Contractor prior to notification by Capital Metro staff.