

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AUSTIN, TEXAS

CONTRACT MODIFICATION

1. CONTRACT NO: 200441 Contracted Bus Operations & Maintenance Services	2. CONTRACT MODIFICATION NO.: 27	3. EFFECTIVE DATE: Upon Signature of both parties under Section 8	4. CONTRACTOR NAME: MV Transportation
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5. AGREEMENT TO MODIFY CONTRACT:

The parties hereto agree to modify the Contract identified in Block 1, above, as described in Block 10, below, pursuant to the terms and conditions of the Contract. Except as modified herein, all other provisions of the Contract (including, but not limited to, price, delivery, and completion date) remain unchanged.

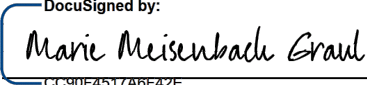
6. AMOUNT OF THIS CONTRACT MODIFICATION: NO CHANGE

7. TERM OR PERIOD OF PERFORMANCE: NO CHANGE

Base Period: January 1, 2022 through December 31, 2022


8. MV TRANSPORTATION, INC. - CONTRACTOR'S EXECUTION:

Name & Title: Marie Meisenbach Graul
(print or type)

DocuSigned by:
Marie Meisenbach Graul
Signature: 
CC90F4517A6F42E...
Date Executed: 1/14/2022

9. CAPITAL METRO - CONTRACTING OFFICER'S EXECUTION:

Name & Title: Anita Deibert, Contracting Officer
(print or type)

E-SIGNED by Anita Deibert
on 2022-01-14 21:38:33 GMT
Signature: 
Date Executed: January 14, 2022

10. DESCRIPTION OF CONTRACT MODIFICATION:

This modification is made in accordance with Exhibit E-Revised-5, Contractual Terms and Conditions, Section 21, entitled **CHANGES**, at no additional cost to Capital Metro, made a part hereof for all pertinent purposes.

- Refer to Exhibit E-Revised-4, Contractual Terms and Conditions. Exhibit E-Revised-4 shall be replaced in its entirety with **Exhibit E-Revised-5, Contractual Terms and Conditions**, attached hereto and made a part hereof for all pertinent purposes.

For and in consideration of the amount stated above, which is the final contract modification amount agreed to by both parties, the receipt of and sufficiency of which is hereby acknowledged and confessed. The contractor has released, acquitted, and forever discharged and by the presents does for itself, its successors and assigns release, acquit and forever discharge Capital Metropolitan Transportation Authority (Capital Metro) from and against any claims, debts, demands, or cause of action which the contractor has or may have had a result of furnishing labor, supplies, or materials for the change orders stated above.

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

END OF MODIFICATION 27

EXHIBIT E-Revised-5
CONTRACTUAL TERMS AND CONDITIONS
(SERVICES CONTRACT)

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 herein.
- (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) "Mobilization" means the service preparation period, or start up, prior to the period of performance of the contract.

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

(u) "Notice to Proceed" means written authorization for the Contractor to start the Services.

(v) "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.

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

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

(y) "Subcontract" means the Contract between the Contractor and its Subcontractors.

(z) "Subcontractor" means subcontractors of any tier.

(aa) "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. This

definition applies only to information, data and materials produced specifically by Contractor for the Authority under the contract, and does not apply to software or computer programs licensed or owned by the Contractor.

2. TYPE OF CONTRACT

(a) This is a fixed price hybrid contract., portions of which are definite quantity/definite delivery and other portions are indefinite quantity/indefinite delivery. In particular:

~~(1) Definite Quantity/Definite Delivery. In addition to the line items specifically listed as "fixed" costs in **Exhibit A-1-Revised-3-Cost Breakdown**, the following line items in **Exhibit A-Revised-3-Pricing Schedule** are definite delivery/definite quantity as follows:~~

- ~~(i) Items #1 and #3 of Sections 7A through 7E, 7G through 7I, 7K through 7M.~~
- ~~(ii) Item #1 of Sections 8A through 8K.~~
- ~~(iii) Items #1 and #3 of Sections 9A through 9E, 9G through 9I, 9K through 9M.~~
- ~~(iv) Item #1 of Sections 10A through 10K.~~

~~(2) Indefinite Quantity/Indefinite Delivery. In addition to the line items specifically listed as "variable" costs in **Exhibit A-1-Revised-2-Cost Breakdown**, the following line items in **Exhibit A-Revised-3-Pricing Schedule** are Indefinite Quantity/Indefinite Delivery. The quantities of supplies and services specified are estimates only and are not purchased by this contract and there is no limit to the number of orders that may be placed under this Contract.~~

- ~~(i) Item #2 and Items #4 through #10 of Section 7A.~~
- ~~(ii) Item #2, and Items #4 through #8 of Sections 7B through 7E, 7G through 7I, 7K through 7M.~~
- ~~(iii) Item #2 of Sections 8A through 8K.~~
- ~~(iv) Items #2 and Items #4 through #8 of Sections 9A through 9E, 9G through 9I, 9K through 9M.~~
- ~~(v) Item #2 of Sections 10A through 10K.~~

This Contract is subject to the following minimum/maximum paragraph:—

- ~~(1) Minimum order. The Authority will order a minimum of \$1,000 for the Services and supplies under this Contract.—~~
- ~~(2) Maximum order. The Authority will order a maximum not to exceed the total dollar amount of this Contract.~~

3. TERM

The base term of the Contract shall **be from January 1, 2022 through December 31, 2022** effective on the date of the Notice to Proceed through December 31, 2024. The Period of Performance of this contract shall begin January 5, 2020, following Contractor's successful completion of mobilization, and will end December 31, 2024. No Services shall be performed under this Contract prior to issuance of a Notice to Proceed.

4. OPTION TO EXTEND CONTRACT TERM

The Authority shall have the unilateral right and option to extend the Contract for up to two option periods **of 12-months in duration each.** for a thirty six (36) month duration each or any combination of months once or more than once within each option period at the option prices set forth in **Exhibit A-Revised-5-Pricing Schedule**, and **Exhibit A-1-Revised-3-Cost Breakdown**, upon written notice to Contractor. The Authority may extend the Contract incrementally within each option period, so that the Contract may be extended for less than 36 months, multiple times within one option period. For example, the Authority may extend the Contract by 12 months three (3) times during the first option period.

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

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

- (1) the Contract and order number (if any);
- (2) a complete itemization of all costs including quantities ordered and delivery order numbers (if any);
- (3) any discounts offered to the Authority under the terms of the Contract;
- (4) evidence of the acceptance of the supplies or services by the Authority; and
- (5) any other information necessary to demonstrate entitlement to payment under the terms of the Contract.

(b) Payment to the Contractor shall be made by the Authority following:

- (1) completion and the Authority's acceptance of the Services and supplies provided by Contractor; and
- (2) Contractor's presentation of an undisputed invoice.

(c) 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).

(d) 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.

(e) 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. **ACCEPTANCE CRITERIA**

A review of the Contractor's Services will be performed by the Authority upon delivery. If any Services performed or supplies provided under this Contract are deemed incomplete or unacceptable in any way, the Authority will require the Contractor to take corrective measures at no additional cost to the Authority.

9. **INSURANCE**

(a) The Contractor shall furnish proof of Capital Metro-stipulated insurance requirements specified below. **Except as stated in (i) below, all** insurance policies shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to the Authority and shall contain a contract waiver of subrogation in favor of the Authority. The Contractor shall furnish to the Authority certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Prior to the expiration of a certificate of insurance, a new certificate of insurance shall be furnished to the Authority showing continued coverage. Insurance coverage will not be cancelled or non-renewed without thirty (30) days advance written notice to the Authority from the Contractor. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to the Authority, and the Authority shall be named as an Additional Insured under each policy. Professional Liability insurance if required by this Contract. All insurance policies shall be written by reputable insurance company or companies acceptable to the Authority with a current Best's Insurance Guide Rating of A+ and Class XIII or better. 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) and Two Million and No/100 (\$2,000,000) Annual Aggregate. Combined Single Limit of Liability for Bodily Injury and Property Damage. Such coverage as herein provided shall be extended for and endorsements included as follows:

(i) Extended Coverages.

(A) Contractual Liability covering the Contractor's obligations herein.

(B) Personal Injury Liability extended to claims arising from employees of the Contractor and the

Authority.

(ii) Endorsements Included. The **Authority named as ADDITIONAL INSURED.**

(2) **Workers' Compensation Insurance:** Statutory Workers' Compensation coverage in the State of Texas. Employers Liability Insurance with minimum limits of liability of One Million and No/100 Dollars (\$1,000,000). The Contractor shall cause its insurer for Worker's Compensation Insurance to endorse the Contractor's policy to **waive subrogation** against Capital Metropolitan Transportation Authority, its directors, officers, employees, agents, successors and assigns for any and all claims incurred by the Contractor's employees which arise out of the work under this contract.

(3) **Automobile Liability Insurance**: Vehicles covering all owned, hired and non-owned automobiles used in connection with work with limits not less than One Million and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage. If the Contractor uses the delivery services of a common carrier, then the Automobile Liability insurance will not be required. If the Contractor uses personnel and vehicles provided by the Contractor, then Automobile Liability will be required. Such coverage as herein provided shall include **the Authority as an ADDITIONAL INSURED**.

(4) **Employment Practices Liability Insurance**: Coverage shall apply to all employment related claims that the contractor may incur. Limits will be no less than One Million Dollars and No/100 Dollars (\$1,000,000).

(5) **Umbrella Liability Insurance**: This coverage shall have with limits of not less than Five Million and No/100 Dollars (\$5,000,000).

(6) **Technology Error's & Omissions Insurance**: Combined Technology & Omissions Policy with a minimum One Million and No/100 Dollars (\$1,000,000) claim limit, including (a) Professional Liability Insurance covering negligent acts, errors and omissions arising from the Contractor's work to pay damages for which the Contractor may become legally obligated (such coverage to be maintained for at least two (2) years after termination of this contract, which obligation shall expressly survive termination of this contract; and (b) Privacy, Security and Media Liability Insurance providing liability for unauthorized access or disclosure, security breaches or system attacks, as well as infringement of copyright and trademark that might result from this contract.

(7) **Cyber Liability Policy**: \$1,000,000 Policy with a minimum One Million and No/100 Dollars (\$1,000,000) per occurrence limit.

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

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

(d) Each insurance policy shall contain the following endorsements: PRIMARY AND NON-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 ENDORSEMENTS SHALL BE EVIDENCED ON THE CERTIFICATE OF INSURANCE, WHICH SHALL BE EVIDENCED ON THE CERTIFICATE OF INSURANCE. PROOF THAT INSURANCE COVERAGE EXISTS SHALL BE FURNISHED TO THE AUTHORITY BY WAY OF A CERTIFICATE OF INSURANCE BEFORE ANY PART OF THE CONTRACT WORK IS STARTED.**

(e) If any insurance coverage required to be provided by the Contractor is canceled, terminated, or modified so that the required insurance coverages are no longer in full force and effect, the Authority may terminate this Contract or obtain insurance coverages equal to the required coverage, the full cost of which will be the responsibility of the Contractor and shall be deducted from any payment due the Contractor.

(f) If any part of the Contract is sublet, the Contractor shall be liable for its Subcontractor's insurance coverages of the types and in the amounts stated above, and shall furnish the Authority with copies of such Certificates of Insurance. No delay in the Services caused by the Contractor's enforcement of its Subcontractor's insurance requirements shall be excusable delay in the Contract. In the event a Subcontractor is unable to furnish insurance in the limits required under the Contract, the Contractor shall endorse the Subcontractor as an ADDITIONAL INSURED on the Contractor's policies.

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

(h) The Contractor must furnish proof of the required insurance within five (5) days of the award of the Contract. Certificate of Insurance must indicate the Contract number and description. The insurance certificate should be furnished to the attention of the Contracting Officer.

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

(j) The Authority shall provide Automobile Liability Insurance for Authority employees while operating Contractor-owned vehicles or while operating Authority-owned vehicles under this Contract with limits not less than Ten Million and No/100 Dollars (\$10,000,000) Combined Single Limit. Such coverage shall include the Contractor as an ADDITIONAL INSURED and shall be primary to and non-contributing with any policy to which Contractor is a named insured. Any deductibles or retentions shall be the sole responsibility of the Authority. The limit can be achieved by any combination of primary and excess insurance as long as any excess liability insurance follows form to the underlying policies providing Contractor additional insured coverage which shall be primary to and non-contributing with any policy to which Contractor is a named insured. The amount of insurance required is in no way a limitation of the coverage available to Contractor as additional insured. All such insurance policies shall contain a contract waiver of subrogation in favor of the Contractor. The Authority shall furnish to the Contractor certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Prior to the expiration of a certificate of insurance, a new certificate of insurance shall be furnished to the Contractor showing continued coverage.

10. PERFORMANCE BOND

The Contractor shall be required to furnish **an annual** Performance Bond, in the amount equal to 5% of the total Base Contract period. The bonding company providing the bond must be approved for amount of bonds on U.S. Department of Treasury Circular 570 and licensed to do business in the state of Texas. The Performance bond shall be submitted to the Contracting Officer within ten (10) calendar days after receipt of a copy of the executed Contract or a Notice of Award. **Thereafter, the Performance Bond shall be due ninety calendar days prior to the start of each year of the Contract.** The Notice to Proceed will not be issued until a properly executed bond is received and accepted by the Authority.

11. 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.

12. REMOVAL OF ASSIGNED PERSONNEL

The Authority may require, in writing, that the Contractor remove from the Services any employee or Subcontractor of Contractor that the Authority deems inappropriate for the assignment.

13. 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.

14. CATASTROPHIC DAMAGE TO / OR FAILURE OF FLEET VEHICLES

- (a) Capital Metro does not provide a warranty for fleet vehicles. A warranty is neither expressed nor implied.
- (b) Damage to or failure of a fleet vehicle which has been caused or contributed to by improper use or storage by any Person other than Capital Metro; failure to comply with the operating, maintenance or service instructions by any Person other than Capital Metro; modifications so as to substantially alter the operating characteristics of the equipment; improper repair or repair with parts not approved or supplied by Capital Metro; improper installation; or other circumstances beyond Capital Metro's control will be paid by Contractor and not by Capital Metro.

15. 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.

16. 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.

17. SUBCONTRACTORS AND OUTSIDE CONSULTANTS

Any Subcontractors and outside associates or consultants required by the Contractor in connection with the Services covered by the Contract will be limited to such individuals or firms as were specifically identified and agreed to by the Authority in connection with the award of this Contract. Any substitution in such Subcontractors, associates, or consultants will be subject to the prior approval of the Authority.

18. 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.

19. PERSONNEL ASSIGNMENTS

(a) The Contractor shall perform the Services in an orderly and workmanlike manner and shall utilize persons skilled and qualified for the performance of the Services. The Authority will have the right to review the experience of each person assigned to perform the Services and approve personnel assignments, including those to be performed by Subcontractors,

(b) The Contractor certifies that the Contractor, and each Subcontractor, have established a criminal history background policy that complies with guidance issued by the U.S. Equal Employment Opportunity Commission and that the Contractor and each Subcontractor conducts criminal history checks on its assigned personnel in accordance with such policy to identify, hire and assign personnel to work on this Contract whose criminal backgrounds are appropriate for the Services being performed, considering the risk and liability to the Contractor and the Authority. The Authority reserves the right to require the Contractor and any Subcontractor to disclose any criminal or military criminal convictions of assigned personnel and the right to disapprove the use of assigned personnel with criminal or military convictions.

(c) Contractor represents and warrants that all contractor employees in driving positions (that includes any person that may at any time operate a Capital Metro or Contractor vehicle) will have held a valid driver's licenses for at least the past five (5) years, and contractor employees in non-driving positions (e.g. maintenance technician, dispatcher, etc.) will have held a driver's license for at least the past three (3) years.

(d) At the commencement of the Contract, the Contractor shall provide a list of candidates to be used to provide the Services and shall certify that a criminal history background check has been completed on each candidate within the preceding 6-month period. Thereafter during the Term, the Contractor shall submit ~~quarterly~~ monthly report containing a list of all persons (including Subcontractors) assigned to perform Services under the Contract and a certification that each named person has undergone a criminal background check as required by this Contract. The Authority shall have the right to audit the Contractor's records for compliance with the provisions of this Section. Criminal background checks shall include the following:

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

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

(3) National Sex Offender Registry

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

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

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

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

Offense Type	Action Required
Crimes Against the Person (other than sex crimes)	
Felony	Submit to Capital Metro for review if less than 10 years from date of release from confinement
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
Crimes Against the Person - Sex Crimes/Registered Sex Offenders	
ALL	Submit to Capital Metro for review
Crimes Against Property	
Felony	Submit to Capital Metro for review if less than 10 years from date of release from confinement
Moral Crimes, including, but not limited to: Drug Crimes, Prostitution, Bigamy, Illegal Gambling, Child Pornography	
Felony	Submit to Capital Metro for review if less than 10 years from date of release from confinement
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
Driving Offenses	
Class A or B Misdemeanor, DWI/DUI or other "serious driving offense"	Disqualified if less than 7 years from date of conviction or deferred adjudication. Submit to Capital Metro for review if between 7-10 years since conviction or deferred adjudication or more than 2 convictions in a lifetime
Class C Misdemeanor 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).

(e) 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.

(f) The Contractor will conduct new criminal history background checks on all assigned personnel ~~every two (2) years~~ annually 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.

20. 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.

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

21. 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-Revised-5**.

22. TERMINATION FOR DEFAULT

(a) The Authority may, subject to the provisions of subparagraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this Contract in either one of the following circumstances:

(1) if the Contractor fails to perform the Services within the time specified herein or any extension thereof;
or

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

(b) In the event the Authority terminates this Contract in whole or in part as provided in subparagraph (a) of this paragraph, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Authority for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this Contract to the extent, if any, it has not been terminated under the provisions of this paragraph.

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

(d) If this Contract is terminated as provided in subparagraph (a), the Authority, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority any Manufacturing Materials as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall, upon direction of the Authority, protect and preserve property in possession of the Contractor in which the Authority has an interest. Payment for completed Manufacturing Materials delivered to and accepted by the Authority shall be at the Contract price. The Authority may withhold from amounts otherwise due the Contractor for such completed Manufacturing Materials such sum as the Authority determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this Contract under the provisions of this paragraph, it is determined by the Authority that the Contractor was not in default or that the default was excusable under the provisions of this paragraph, the rights and obligations of the parties shall be those provided in the paragraph entitled "Termination for Convenience" contained in this **Exhibit E-Revised-5**.

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

23. TERMINATION FOR CONVENIENCE

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

(b) The Contractor shall incur no further obligations in connection with the terminated orders, and, on the date set forth in the notice of termination, the Contractor will stop providing Services to the extent specified. The Contractor

also shall terminate outstanding orders and subcontracts as they relate to the terminated order. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated orders. The Authority may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or Subcontracts to the Authority. The Contractor must still complete any orders not terminated by the notice of termination and may incur such obligations as are necessary to do so.

(c) The Authority may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority: (1) any completed supplies; and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "Manufacturing Materials") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this Contract. The Contractor shall, upon direction of the Authority, protect and preserve property in the possession of the Contractor in which the Authority has an interest. If the Authority does not exercise this right, the Contractor shall use its best efforts to sell such supplies and Manufacturing Materials.

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

(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.

24. CONTRACTOR CERTIFICATION

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

25. INTELLECTUAL PROPERTY

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

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

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

(1) grant to the Authority the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to:

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

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

(2) where the obtaining of worldwide rights is not reasonably practical or feasible, provide written notice to the Authority of such pre-existing or third party rights or limitations, request the Authority's approval of such pre-existing or third party rights, obtain a limited right and license to use such pre-existing or third party rights on such terms as may be reasonably negotiated, and obtain the Authority's written approval of such pre-existing or third party rights and the limited use of same. The Contractor shall provide the Authority with documentation indicating a third party's written approval for the Contractor to use any pre-existing or third-party rights that may be embodied, contained, reserved or reflected in the Works. **THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, REGULATORY PROCEEDINGS AND/OR CAUSES OF ACTION, AND ALL LOSSES, DAMAGES, AND COSTS (INCLUDING ATTORNEYS' FEES AND SETTLEMENT COSTS) ARISING FROM OR RELATING TO, DIRECTLY OR INDIRECTLY, ANY CLAIM OR ASSERTION BY ANY THIRD PARTY THAT THE WORKS INFRINGE ANY THIRD-PARTY RIGHTS.** The foregoing indemnity obligation shall not apply to instances in which the Authority either:

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

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

(d) The Contractor hereby warrants and represents to the Authority that individuals or characters appearing or depicted in any advertisement, marketing, promotion, publicity or media, of any type or form that may now exist or hereafter be created or developed by or on behalf of the Contractor for the use by or benefit of the Authority, have provided their written consent for the use, reproduction, display, performance, and distribution of, and/or preparation of derivative works to, their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity ("Personality Rights"), and have been compensated for such Personality Rights, if appropriate. If such permission has been obtained for a limited time, the Contractor shall be responsible for any costs associated with claims resulting from such use, etc., of the Personality Rights after the expiration of those time limits. **THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE AUTHORITY HARMLESS FROM ANY CLAIMS, INCLUDING BUT NOT LIMITED TO CLAIMS FOR INVASION OF PRIVACY, INFRINGEMENT OF THE RIGHT OF PUBLICITY, LIBEL, UNFAIR COMPETITION, FALSE ADVERTISING, INTENTIONAL OR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, COPYRIGHT OR TRADEMARK INFRINGEMENT,**

AND/OR CLAIMS FOR ATTORNEY'S FEES, RESULTING FROM SUCH USE, ETC., OF THE PERSONALITY RIGHTS.

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

(f) The Contract is intended to protect the Authority's proprietary rights pertaining to the Works, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the Authority's business. Therefore, the Contractor acknowledges and stipulates that a court of competent jurisdiction should immediately enjoin any material breach of the intellectual property and confidentiality provisions of this Contract, upon a request by the Authority, without requiring proof of irreparable injury as same should be presumed.

(g) Upon the request of the Authority, but in any event upon termination of this Contract, the Contractor shall surrender to the Authority all documents and things pertaining to the Works, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by the Contractor or furnished by the Authority to the Contractor, including all materials embodying the Works, any Authority confidential information, or Intellectual Property Rights, regardless of whether complete or incomplete. This paragraph is intended to apply to all Works made or compiled by the Contractor, as well as to all documents and things furnished to the Contractor by the Authority or by anyone else that pertains to the Works.

26. 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.

27. 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.

28. 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 paragraph shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this paragraph.

29. 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.

30. 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.

31. 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.

32. CONFLICT OF INTEREST

(a) Reference is made to Exhibit B-Revised-1, Representations and Certifications, Code of Ethics Conduct, which is incorporated herein and made a part of this Contract. Capitalized terms used in this paragraph and not otherwise defined shall have the meanings as described to them in the Code of Conduct.

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

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

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

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

33. 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.

34. 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.

35. REQUEST FOR INFORMATION

(a) The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any party other than the Authority and its authorized agents except as otherwise provided by this Contract or after obtaining the prior written permission of the Authority.

(b) This Contract, all data and other information developed pursuant to this Contract shall be subject to the Texas Public Information Act. The Authority shall comply with all aspects of the Texas Public Information Act.

(c) The Contractor is instructed that any requests for information regarding this Contract and any deliverables shall be referred to the Authority.

36. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

(a) All documentation related to or prepared in connection with any proposal, including the contents of any proposal contracts, responses, inquiries, correspondence, and all other material submitted in connection with the proposal shall become the property of the Authority upon receipt.

(b) All documents, reports, data, graphics and other materials produced under this Contract shall become the sole possession of the Authority upon receipt and payment, subject only to the Contractor's professional obligation to maintain copies of its work product.

37. 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.

38. 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.

39. CLAIMS

In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Contractor arising out of this Contract, the Contractor shall give written notice thereof, to the Authority within three (3) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the name and address of the person, firm, corporation, or other entity making such claim or instituting or threatening to institute any type of action or proceeding; the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the attention of the President/CEO, Capital Metropolitan Transportation Authority, 2910 East 5th Street, Austin, Texas 78702.

40. 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.

41. 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.

42. 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.

43. 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.

44. INDEMNIFICATION

(a) THE CONTRACTOR WILL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES (THE AUTHORITY AND EACH SUCH PERSON OR ENTITY IS AN "INDEMNIFIED PARTY") HARMLESS FROM AND AGAINST AND PAY ANY AND ALL DAMAGES (AS DEFINED HEREIN) DIRECTLY OR INDIRECTLY RESULTING FROM, RELATING TO, ARISING OUT OF OR ATTRIBUTABLE TO ANY OF THE FOLLOWING:

(1) ANY BREACH OF ANY REPRESENTATION OR WARRANTY THAT THE CONTRACTOR HAS MADE IN THIS CONTRACT;

(2) ANY BREACH, VIOLATION OR DEFAULT BY OR THROUGH THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS OF ANY OBLIGATION OF THE CONTRACTOR IN THIS CONTRACT OR ANY OTHER AGREEMENT BETWEEN THE CONTRACTOR AND THE AUTHORITY;

(3) THE USE, CONDITION, OPERATION OR MAINTENANCE OF ANY PROPERTY, VEHICLE, FACILITY OR OTHER ASSET OF THE AUTHORITY TO WHICH THE CONTRACTOR HAS ACCESS OR AS TO WHICH THE CONTRACTOR PROVIDES SERVICES, **BUT SPECIFICALLY EXCLUDING DAMAGES (AS DEFINED HEREIN) TO THE EXTENT CAUSED BY THE USE OR OPERATION OF ANY VEHICLE BY AN EMPLOYEE OF THE AUTHORITY;** OR

(4) ANY ACT OR OMISSION OF THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CUSTOMERS, INVITEES, REPRESENTATIVES OR VENDORS.

(b) **TO THE EXTENT AUTHORIZED BY TEXAS LAW AND THE TEXAS CONSTITUTION, THE AUTHORITY WILL HOLD THE CONTRACTOR AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES (THE CONTRACTOR AND EACH SUCH PERSON OR ENTITY IS A "CONTRACTOR INDEMNIFIED PARTY") HARMLESS FROM AND AGAINST AND PAY ANY AND ALL DAMAGES (AS DEFINED HEREIN) THAT ARE (I) DIRECTLY OR INDIRECTLY RESULTING FROM, RELATING TO, ARISING OUT OF OR ATTRIBUTABLE TO THE USE OR OPERATION OF ANY VEHICLE BY AN EMPLOYEE OF THE AUTHORITY AND (II) COVERED UNDER THE AUTHORITY'S AUTOMOBILE LIABILITY INSURANCE POLICY DESCRIBED IN SECTION 9(j) OF THIS EXHIBIT E.** "ACTION" MEANS ANY ACTION, APPEAL, PETITION, PLEA, CHARGE, COMPLAINT, CLAIM, SUIT, DEMAND, LITIGATION, MEDIATION, HEARING, INQUIRY, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING.

(c) "DAMAGES" MEANS ALL DIRECT OR INDIRECT DAMAGES, LOSSES, LIABILITIES, DEFICIENCIES,

SETTLEMENTS, CLAIMS, AWARDS, INTEREST, PENALTIES, JUDGMENTS, FINES, OR OTHER COSTS OR EXPENSES OF ANY KIND OR NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, CONTINGENT OR VESTED, MATURED OR UNMATURED, AND WHETHER OR NOT RESULTING FROM THIRD-PARTY CLAIMS, INCLUDING COSTS (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, OTHER PROFESSIONAL ADVISORS AND EXPERT WITNESSES) RELATED TO ANY INVESTIGATION, ACTION, SUIT, ARBITRATION, APPEAL, CLAIM, DEMAND, INQUIRY, COMPLAINT, MEDIATION, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING.

(d) "THREATENED" MEANS A DEMAND OR STATEMENT HAS BEEN MADE (ORALLY OR IN WRITING) OR A NOTICE HAS BEEN GIVEN (ORALLY OR IN WRITING), OR ANY OTHER EVENT HAS OCCURRED OR ANY OTHER CIRCUMSTANCES EXIST THAT WOULD LEAD A PRUDENT PERSON OR ENTITY TO CONCLUDE THAT AN ACTION OR OTHER MATTER IS LIKELY TO BE ASSERTED, COMMENCED, TAKEN OR OTHERWISE PURSUED IN THE FUTURE.

(e) IF ANY ACTION IS COMMENCED OR THREATENED THAT MAY GIVE RISE TO A CLAIM FOR INDEMNIFICATION (A "CLAIM") BY ANY INDEMNIFIED PARTY AGAINST THE CONTRACTOR, THEN SUCH INDEMNIFIED PARTY WILL PROMPTLY GIVE NOTICE TO THE CONTRACTOR AFTER SUCH INDEMNIFIED PARTY BECOMES AWARE OF SUCH CLAIM. FAILURE TO NOTIFY THE CONTRACTOR WILL NOT RELIEVE THE CONTRACTOR OF ANY LIABILITY THAT IT MAY HAVE TO THE INDEMNIFIED PARTY, EXCEPT TO THE EXTENT THAT THE DEFENSE OF SUCH ACTION IS MATERIALLY AND IRREVOCABLY PREJUDICED BY THE INDEMNIFIED PARTY'S FAILURE TO GIVE SUCH NOTICE. THE CONTRACTOR WILL ASSUME AND THEREAFTER DILIGENTLY AND CONTINUOUSLY CONDUCT THE DEFENSE OF A CLAIM WITH COUNSEL THAT IS SATISFACTORY TO THE INDEMNIFIED PARTY. THE INDEMNIFIED PARTY WILL HAVE THE RIGHT, AT ITS OWN EXPENSE, TO PARTICIPATE IN THE DEFENSE OF A CLAIM WITHOUT RELIEVING THE CONTRACTOR OF ANY OBLIGATION DESCRIBED ABOVE. IN NO EVENT WILL THE CONTRACTOR APPROVE THE ENTRY OF ANY JUDGMENT OR ENTER INTO ANY SETTLEMENT WITH RESPECT TO ANY CLAIM WITHOUT THE INDEMNIFIED PARTY'S PRIOR WRITTEN APPROVAL, WHICH WILL NOT BE UNREASONABLY WITHHELD. UNTIL THE CONTRACTOR ASSUMES THE DILIGENT DEFENSE OF A CLAIM, THE INDEMNIFIED PARTY MAY DEFEND AGAINST A CLAIM IN ANY MANNER THE INDEMNIFIED PARTY REASONABLY DEEMS APPROPRIATE. THE CONTRACTOR WILL REIMBURSE THE INDEMNIFIED PARTY PROMPTLY AND PERIODICALLY FOR THE DAMAGES RELATING TO DEFENDING AGAINST A CLAIM AND WILL PAY PROMPTLY THE INDEMNIFIED PARTY FOR ANY DAMAGES THE INDEMNIFIED PARTY MAY SUFFER RELATING TO A CLAIM.

(f) THE INDEMNIFICATION OBLIGATIONS AND RIGHTS PROVIDED FOR IN THIS CONTRACT DO NOT REQUIRE (AND SHALL NOT BE CONSTRUED AS REQUIRING) THE CONTRACTOR TO INDEMNIFY, HOLD HARMLESS, OR DEFEND ANY INDEMNIFIED PARTY (OR ANY THIRD PARTY) AGAINST ANY ACTION OR CLAIM (OR THREATENED ACTION OR CLAIM) CAUSED BY THE SOLE 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.

45. RECORD RETENTION; ACCESS TO RECORDS AND REPORTS

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

(b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price determinable Contract, or any combination thereof, the Contractor shall maintain, and the Authority and its representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Contract.

(c) If the Contractor submitted certified cost or pricing data in connection with the pricing of this Contract or if the Contractor's cost of performance is relevant to any change or modification to this Contract, the Authority and its representatives shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance of such Contract, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.

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

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

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

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

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

46. EXCUSABLE DELAYS

(a) Except for defaults of Subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this Contract under its terms if the failure arises from Force Majeure Events. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the performance of the Services.

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

- (1) the subcontracted supplies or services were obtainable from other sources;
- (2) the Authority ordered the Contractor in writing to obtain these services from the other source; and
- (3) the Contractor failed to comply reasonably with this order.

(c) Upon the request of the Contractor, the Authority shall ascertain the facts and extent of the failure. If the Authority determines that any failure to perform results from one or more of the causes above, the delivery schedule or period of performance shall be revised, subject to the rights of the Authority under this Contract.

47. LOSS OR DAMAGE TO PROPERTY

The Contractor shall be responsible for any loss or damage to property including money securities, merchandise, fixtures and equipment belonging to the Authority or to any other individual or organization, if any such loss or damage was caused by the Contractor or any Subcontractor at any tier, or any employee thereof, while such person is on the premises of the Authority as an employee of the Contractor or Subcontractor.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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. ~~The Award/Contract Form~~
2. **Exhibit A-Revised-5-Pricing Schedule and A-1-Revised-3-Cost Breakdown**
3. **Exhibit E-Revised-5 – Contractual Terms and Conditions**
4. **Exhibit E-1-Revised-2 – Addendum to Contractual Terms and Conditions, Federally Assisted**
5. **Exhibit F-Revised-10 – Scope of Services**
6. Exhibit IT-Revised-1 – Proprietary Rights and Data Security Addendum
7. **Exhibit B-Revised-2 – Representations and Certifications**
8. ~~Attachments 1 – 21~~

~~9. Contractor's Final Proposal Revision, dated May 28, 2019 (Volumes 1 and 2)~~

~~10. Contractor's Initial Proposal dated February 19, 2019 (Volumes 1 and 2) Other provisions or attachments to the Contract.~~

53. 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.

54. 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.

55. LABOR PROVISIONS

(a) The Authority shall be administratively and financially responsible for obligations under Section 13(c) of the Federal Transit Act (49 USC §5333(b)) and the Capital Metro 1989 13(c) Arrangement.

(b) The Contractor shall have financial liability for any 13(c) claims or obligations that are created by acts or omissions of the Contractor that are not directed by the Authority. The Contractor agrees that it is bound to the terms of the 1989 13(c) Arrangement and shall collectively bargain with the collective bargaining representative selected by the work force in accordance with the National Labor Relations Act (NLRA) and applicable law. In addition, the Contractor shall cooperate with the Authority (including the provision of payroll records and other information) in the resolution or defense of any 13(c) claims or disputes, and in the implementation of any 13(c) remedies.

(c) The Contractor shall not assist or encourage any employee to file or otherwise pursue a 13(c) claim against the Authority, or take any action which is contrary to the interests of the Authority under 13(c) or its 13(c) arrangements or agreements, relating to the termination of Services under this contract, any future transition from the Contractor to service provider, or any other action or event relating to this contract. If the Contractor fails to comply with this obligation, the Contractor shall be financially liable for all costs incurred by the Authority (including attorneys' fees) associated with any 13(c) claims or delays in the receipt of Federal grants.

56. CAPITAL METRO PROPERTY

(a) Capital Metro-furnished property.

(1) Capital Metro shall deliver to the Contractor, for use in connection with and under the terms of this contract, Capital Metro-furnished property described Attachment– Equipment List and Attachment– Tool List together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Capital Metro-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Capital Metro-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Capital Metro-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Capital Metro Program Manager, ~~Paratransit~~ Bus Contracts detailing the facts, and, as directed by Capital Metro and at Capital Metro expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, Capital Metro shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Capital Metro-furnished property is not delivered to the Contractor by the required time, Capital Metro shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Capital Metro-furnished property.

(1) Capital Metro may, by written notice:

(i) decrease the Capital Metro-furnished property provided or to be provided under this contract, or

(ii) substitute other Capital Metro-furnished property for the property to be provided by Capital Metro, or to be acquired by the Contractor for Capital Metro, under this contract. The Contractor shall promptly take such action as Capital Metro may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if Capital Metro has agreed to make the property available for performing this contract and there is any-

(i) Decrease or substitution in this property pursuant to paragraph (b)(1) of this clause; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Capital Metro property.

(1) Capital Metro shall retain title to all Capital Metro-furnished property.

(2) All Capital Metro-furnished property and all property acquired by the Contractor, title to which vests in Capital Metro under this paragraph (collectively referred to as "Capital Metro property"), are subject to the provisions of this clause. Title to Capital Metro property shall not be affected by its incorporation into or attachment to any property not owned by Capital Metro, nor shall Capital Metro property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities and equipment acquired by the Contractor for Capital Metro under this contract shall pass to and vest in Capital Metro when its use in performing this contract commences or when Capital Metro has paid for it, whichever is earlier, whether or not title previously vested in Capital Metro.

(4) If this contract contains a provision directing the Contractor to purchase material for which Capital Metro will reimburse the Contractor as a direct item of cost under this contract-

- (i) Title to material purchased from a vendor shall pass to and vest in Capital Metro upon the vendor's delivery of such material; and
- (ii) Title to all other material shall pass to and vest in Capital Metro upon-
 - (A) Issuance of the material for use in contract performance;
 - (B) Commencement of processing of the material or its use in contract performance; or
 - (C) Reimbursement of the cost of the material by Capital Metro, whichever occurs first.
- (d) Use of Capital Metro property.

Capital Metro property shall be used only for performing this contract, unless otherwise provided in this contract or approved by Capital Metro.

- (e) Property administration.

(1) The Contractor shall be responsible and accountable for all Capital Metro property provided under this contract and shall comply with Section 59, Management of Capital Metro Property in the Possession of Contractors, of this **Exhibit E-Revised-5**.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Capital Metro property in accordance with sound industrial practice and Section 57. Capital Metro Property (Facilities), (h) Maintenance of this **Exhibit E-Revised-5**.

(3) If damage occurs to Capital Metro property, the risk of which has been assumed by Capital Metro under this contract, Capital Metro shall replace the items or the Contractor shall make such repairs as Capital Metro directs. However, if the Contractor cannot affect such repairs within the time required, the Contractor shall dispose of the property as directed by Capital Metro. When any property for which Capital Metro is responsible is replaced or repaired, Capital Metro shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which Capital Metro is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

- (f) Access.

Capital Metro and all its designees shall have access at all reasonable times to the premises in which any Capital Metro property is located for the purpose of inspecting the Capital Metro property.

- (g) Risk of loss.

Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Capital Metro property upon its delivery to the Contractor or upon passage of title to Capital Metro under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Capital Metro property or for Capital Metro property properly consumed in performing this contract.

- (h) Equitable adjustment.

When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, Capital Metro may initiate an equitable adjustment in favor of Capital Metro. The right to an equitable adjustment shall be the Contractor's exclusive remedy. Capital Metro shall not be liable to suit for breach of contract for-

- (1) Any delay in delivery of Capital Metro-furnished property;

- (2) Delivery of Capital Metro-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Capital Metro-furnished property; or
- (4) Failure to repair or replace Capital Metro property for which Capital Metro is responsible.

(i) Final accounting and disposition of Capital Metro property.

Upon completing this contract, or at such earlier dates as may be fixed by Capital Metro, the Contractor shall submit, in a form acceptable to Capital Metro, inventory schedules covering all items of Capital Metro property (including any resulting scrap) not consumed in performing this contract or delivered to Capital Metro. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Capital Metro property as may be directed or authorized by Capital Metro. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to Capital Metro as Capital Metro directs.

(j) Abandonment and restoration of Contractor's premises.

Unless otherwise provided herein, Capital Metro –

(1) May abandon any Capital Metro property in place, at which time all obligations of Capital Metro regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Capital Metro-furnished property is withdrawn or is unsuitable for the intended use, or if other Capital Metro property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications.

All communications under this clause shall be in writing.

57. CAPITAL METRO PROPERTY (FACILITIES)

(a) Definitions. For the purpose of this contract, the following definitions apply:

- "Facilities," as used in this clause, means all property provided under this contract
- "Related contract," as used in this clause, means a Capital Metro contract or subcontract for supplies or services under which the use of the facilities is or may be authorized.

(b) Facilities to be provided.

Capital Metro, subject to the provisions of this contract, shall furnish to the Contractor the facilities identified in Attachment– Tools and Equipment and Attachment– Building Suites, as Capital Metro-furnished facilities.

(c) Period of this contract.

If not otherwise specified in the contract and if not previously terminated under this Section 57 paragraph (m) below, the use of the facilities authorized under this contract shall terminate upon expiration of the contract.

(d) Title in the facilities.

- (1) Capital Metro shall retain title to all Capital Metro-furnished property.

(2) Title to all facilities and components shall pass to and vest in Capital Metro upon delivery by the vendor of all such items purchased by the Contractor for which it is entitled to be reimbursed as a direct item of cost under this contract.

(3) Title to replacement parts furnished by the Contractor in carrying out its normal maintenance obligations under this Section 57 paragraph (h) below shall pass to and vest in Capital Metro upon completion of their installation in the facilities.

(4) Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in Capital Metro upon:

- (i) Issuance of the property for use in performing this contract;
- (ii) Commencement of processing or use of the property in performing this contract; or
- (iii) Reimbursement of the cost of the property by Capital Metro, whichever occurs first.

(5) Title to the facilities shall not be affected by their incorporation into or attachment to any property not owned by Capital Metro, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by Capital Metro, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(6) The Contractor may at its own expense, with the written approval of Capital Metro, install, arrange, or rearrange, on Capital Metro-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by Capital Metro, unless Capital Metro determines that it is so permanently attached that removal would cause substantial injury to Capital Metro property.

(7) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Capital Metro buildings or other real property without advance written approval of Capital Metro. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(e) Location of the facilities.

The Contractor may use the facilities at any of the locations with the prior written approval of Capital Metro, at any other location. In granting this approval, Capital Metro may prescribe such terms and conditions as may be deemed necessary for protecting Capital Metro's interest in the facilities involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(f) Notice of use of the facilities.

The Contractor shall notify Capital Metro in writing:

(1) Whenever use of all facilities for Capital Metro work in any quarterly period averages less than 75 percent of the total use of the facilities; or

(2) Whenever any item of the facilities is no longer needed or usable for performing existing related contracts that authorize such use.

(g) Property control.

The Contractor shall maintain property control procedures and records and a system of identification of the facilities, in accordance with Section 59 Management of Capital Metro Property in the Possession of Contractors, of this **Exhibit E-Revised-5**.

(h) Maintenance.

(1) Except as otherwise provided in the Contract, the Contractor shall perform normal maintenance of the facilities in accordance with sound industrial practice, including protection, preservation, and repair of the facilities and normal parts replacement for equipment. In addition, the maintenance shall include, but not be limited to the following:

- (i) Annual inspection and certification of existing back flow protection device on the 2" water line for the bus wash system.
- (ii) Annual industrial waste/discharge permit for the existing sludge/grease traps located on site underground.
- (iii) Annual cost of having sludge/grease pit emptied and disposal of contents at a licensed hazardous waste disposal site and tracking of hazardous waste according all local, state or other applicable regulations or EPA guidelines.
- (iv) Disposal of reclaimed motor oil;
- (v) Annual inspection of existing irrigation system and replacement of damaged parts;
- (vi) Plumbing lines and equipment repair;
- (vii) Exterior lighting and high-bay maintenance light bulb replacement;
- (viii) Bus wash gantry system annual maintenance and repair.

(2) Within ~~twenty (20) days after the execution of this contract~~ ninety (90) days from the date of Notice to Proceed, the Contractor shall submit to the Capital Metro Project Manager a written proposed maintenance program, including a maintenance records system, in sufficient detail to show its adequacy. If the Project Manager agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under paragraphs (h)(1) and (h)(5) of this clause.

(3) Capital Metro may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made in any affected related contract that so provides.

(4) The Contractor shall perform any maintenance work directed by Capital Metro in writing. The Contractor shall notify Capital Metro in writing when sound industrial practice requires maintenance in excess of the normal maintenance program.

(5) The Contractor shall keep records of all work done on the facilities and shall give Capital Metro reasonable opportunity to inspect these records. All records related to asset management, maintenance and disposal will be documented in the Spear 4i asset management system. When facilities are disposed of under this contract, the Contractor shall deliver the related records to Capital Metro or, if Capital Metro directs, to third persons.

(6) The Contractor's obligation under this clause for each item of facilities shall continue until the item is removed, abandoned, or disposed of; until the expiration of the 120-day period stated in paragraph (n)(3) of this clause; and until the Contractor has discharged its other obligations under this contract with respect to such items.

(i) Access.

Capital Metro and any persons designated by it shall, at all reasonable times, have access to the premises where any of the facilities are located.

(j) Indemnification of Capital Metro.

The Contractor shall indemnify Capital Metro and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities.

(k) Late delivery, diversion, and substitution.

(1) Capital Metro shall not be liable for breach of contract for any delay in delivery or non-delivery of facilities to be furnished under this contract.

(2) Capital Metro has the right, at its expense, to divert the facilities under this contract by directing the Contractor to-

(i) Deliver any of the facilities to locations other than those specified in Exhibit--Equipment/Facility List; or

(ii) Assign purchase orders or subcontracts for any of the facilities to Capital Metro or third parties.

(3) Capital Metro may furnish any facilities instead of having the Contractor acquire or construct them. In such event, the Contractor is entitled to reimbursement for the cost related to the acquisition or construction of the facilities, including the cost of terminating purchase orders and subcontracts.

(4) Appropriate equitable adjustment may be made in any related contract that so provides and that is affected by any non-delivery, delay, diversion, or substitution under this paragraph (k).

(l) Representations and warranties.

(1) Capital Metro makes no warranty, express or implied, regarding the condition or fitness for use of any facilities. To the extent practical, the Contractor shall be allowed to inspect all the facilities to be furnished by Capital Metro before the award of this contract.

(2) If the Contractor receives facilities in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify Capital Metro, detailing the facts and, as directed by Capital Metro and at Capital Metro expense, either

(i) return such item or otherwise dispose of it or

(ii) effect repairs or modifications. An appropriate equitable adjustment may be made in any related contract that so provides and that is affected by the return, disposition, repair, or modification of any facilities.

(m) Termination of the use of the facilities.

The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any of the facilities. Except as otherwise provided in this contract, an equitable adjustment may be made in any related contract of the Contractor that so provides and that is affected by such notice.

(n) Disposition of the facilities.

(1) The provisions of this paragraph (n) shall apply to facilities for which use has been terminated by Capital Metro under paragraph (m), except as provided in paragraph (n)(2).

(2) Within 60 days after the effective date of any notice of termination given under paragraph (m), or within such longer period as Capital Metro may approve in writing, the Contractor shall submit to Capital Metro, in a form satisfactory to Capital Metro, an accounting for all the facilities covered by the notice.

(3) Within 120 days after the Contractor accounts for any facilities under paragraph (n)(2), Capital Metro shall give written notice to the Contractor as to the disposition of the facilities, except as otherwise provided in paragraph (n)(5). In its disposition of the facilities, Capital Metro may either-

(i) Abandon the facilities in place, in which case all obligations of Capital Metro regarding such abandoned facilities and the restoration or rehabilitation of the premises in and on which they are located shall immediately cease; or

(ii) Require the Contractor to comply, at Capital Metro expense, with such directions as Capital Metro may give with respect to:

(A) The preparation, protection, removal, or shipment of the affected facilities;

(B) The retention or storage of the affected facilities; provided that Capital Metro shall not direct the Contractor to retain or store any items of facilities in or on real property not owned by Capital Metro if such retention or storage will interfere with the Contractor's operations;

(C) The restoration of Capital Metro-owned property incident to the removal of the facilities from such property; and

(D) The sale of any affected facilities in such manner, at such times, and at such price as may be approved by Capital Metro, except that the Contractor shall not be required to extend credit to any purchaser.

(4) If Capital Metro fails to give the written notice required by paragraph (n)(3) within the prescribed 120-day period, the Contractor may, upon not less than 30 days' written notice to Capital Metro and at Capital Metro risk and expense,

(i) retain the facilities in place, or

(ii) remove any of the affected severable facilities located in Contractor-owned property and store them at the Contractor's plant or in a public insured warehouse, in accordance with sound practice. Except as provided in this paragraph, Capital Metro shall not be liable to the Contractor for failure to give the written notice required by paragraph (n)(3).

(5) Non-severable items of the facilities or items of the facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(6) Capital Metro, either directly or by third persons engaged by it, may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated, other than those for which specific provision is made in paragraph (n)(5).

(7) The Contractor shall, within a reasonable time after the expiration of the 120-day period specified in paragraph (n)(3), remove all of its property from Capital Metro property and take such action as Capital Metro may direct in writing with respect to restoring that Capital Metro property (to the extent that it is affected by the installation of the Contractor's property) to its condition before such installation.

(8) Unless otherwise specifically provided in this contract, Capital Metro shall not be obligated to the Contractor to restore or rehabilitate any property at the Contractor's plant, except for restoration or rehabilitation costs caused by removal of the facilities under subdivision (n)(3)(ii). The Contractor agrees to indemnify Capital Metro against all suits or claims for damages arising out of Capital Metro's failure to restore or rehabilitate any property at the Contractor's plant or property of its subcontractors, except any damage as may be caused by the negligence of Capital Metro, its agents, or independent contractors.

58. LIABILITY FOR THE FACILITIES

(a) The term "Contractor's managerial personnel," as used in this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:

- (1) All or substantially all of the Contractor's business,
 - (2) All or substantially all of the Contractor's operations at any one plant or separate location in which the facilities are installed or located, or
 - (3) A separate and complete major industrial operation in connection with which the facilities are used.
- (b) The Contractor shall not be liable for any loss or destruction of, or damage to, the facilities or for expenses incidental to such loss, destruction, or damage, except as provided in this clause.
- (c) The Contractor shall be liable for loss or destruction of, or damage to, the facilities, and for expenses incidental to such loss, destruction, or damage:
- (1) Which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;
 - (2) Which results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
 - (3) For which the Contractor is otherwise responsible under the express terms of this contract;
 - (4) Which results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or
 - (5) Which results from a failure, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel:
 - (i) To establish, maintain, and administer a system for control of the facilities in as set forth herein; or
 - (ii) To maintain and administer a program for maintenance, repair, protection, and preservation of the facilities, in accordance with Section 57(h) Maintenance of this **Exhibit E-Revised-5**, or to take reasonable steps to comply with any appropriate written direction that Capital Metro may prescribe as reasonably necessary for the protection of the facilities.
- (d) If the Contractor fails to act as provided by paragraph (c)(5) of this clause, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of Capital Metro's disapproval, withdrawal of approval, or non-acceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

Furthermore, any loss or destruction of, or damage to, the Capital Metro property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage:

- (1) Did not result from the Contractor's failure to maintain an approved program or system, or
 - (2) Occurred while an approved program or system was maintained by the Contractor.
- (e) If the Contractor transfers facilities to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the facilities. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the facilities while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of Capital Metro, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all the facilities in as good condition as when received, except for reasonable wear and tear or for their utilization in accordance with the provisions of the prime contract.

(f) Unless expressly directed in writing by Capital Metro, the Contractor shall not include in the price or cost under any contract with Capital Metro the cost of insurance (including self-insurance) against any form of loss, destruction, or damage to the facilities. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances) as Capital Metro shall require or approve. Such insurance shall provide for thirty (30) days advance notice to the Contracting Officer, in the event of cancellation or material change in the policy coverage on the part of the insurer. Documentation of insurance or an authenticated copy of such insurance shall be deposited promptly with Capital Metro. The Contractor shall, not less than thirty (30) days before the expiration of such insurance, deliver to Capital Metro documentation of insurance or an authenticated copy of each renewal policy. The insurance shall be in the name of Capital Metro, the Contractor, and such other interested parties as Capital Metro shall approve and shall contain a loss payable clause reading substantially as follows: Any loss under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of Capital Metro, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the office designated by Capital Metro.

(g) When there is any loss or destruction of, or damage to, the facilities:

(1) The Contractor shall promptly notify Capital Metro and, with the assistance of Capital Metro, shall take all reasonable steps to protect the facilities from further damage, separate the damaged and undamaged facilities, put all the facilities in the best possible order, and promptly furnish to Capital Metro (and in any event within 30 days) a statement of:

- (i) The facilities lost or damaged,
- (ii) The time and origin of the loss or damage,

- (ii) All known interests in commingled property of which the facilities are a part, and

- (iv) Any insurance covering any part of or interest in such commingled property.

(2) The Contractor shall make such repairs, replacements and renovations of the lost, destroyed, or damaged facilities, or take such other action as Capital Metro may direct in writing; and

(3) The Contractor shall perform its obligations under this paragraph (g) at Capital Metro expense, except to the extent that the Contractor is liable for such damage, destruction, or loss under the terms of this clause, and except as any damage, destruction, or loss is compensated by insurance.

(h) Capital Metro is not obliged to replace or repair the facilities that have been lost, destroyed, or damaged. If Capital Metro does not replace or repair the facilities, the right of the parties to an equitable adjustment in delivery or performance dates, price, or both, and in any other contractual condition of the related contracts affected shall be governed by the terms and conditions of those contracts.

(i) Except to the extent of any loss or destruction of, or damage to, the facilities for which the Contractor is relieved of liability, the facilities shall be returned to Capital Metro or otherwise disposed of under the terms of this contract:

- (1) In as good condition as when received by the Contractor;
- (2) Improved; or
- (3) As required under the terms of this contract, less ordinary wear and tear.

(j) If the Contractor is in any way compensated (excepting proceeds from use and occupancy insurance, the cost of which is not borne directly or indirectly by Capital Metro) for any loss or destruction of, or damage to, the facilities, the Contractor, as directed by Capital Metro, shall:

- (1) Use the proceeds to repair, renovate, or replace the facilities involved; or
- (2) Pay such proceeds to Capital Metro.

(k) The Contractor shall do nothing to prejudice Capital Metro's right to recover against third parties for any loss or destruction of, or damage to, the facilities. Upon the request of the Contracting Officer, the Contractor shall furnish to Capital Metro, at Capital Metro expense, all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of Capital Metro) in obtaining recovery.

59. MANAGEMENT OF CAPITAL METRO PROPERTY IN THE POSSESSION OF CONTRACTORS

(a) Scope

This section prescribes the minimum requirements contractors must meet in establishing and maintaining control over Capital Metro property. If there is any inconsistency between this section and the terms of the contract under which the Capital Metro property is provided, the terms of the contract shall govern.

(b) Definitions

(1) "Accessory item," as used in this section, means an item that facilitates or enhances the operation of plant equipment, but which is not essential for its operation.

(2) "Auxiliary item," as used in this section, means an item without which the basic unit of plant equipment cannot operate.

(3) "Contractor-acquired property," as used in this part, means property acquired or otherwise provided by the contractor for performing a contract and to which Capital Metro has title.

(4) "Custodial records," as used in this section, means written memoranda of any kind, such as requisitions, issue hand receipts, tool checks, and stock record books, used to control items issued from tool cribs, tool rooms, and stockrooms.

(5) "Discrepancies incident to shipment," as used in this section, means all deficiencies incident to shipment of Capital Metro property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and property actually received. Such deficiencies include loss, damage, destruction, improper status and condition coding, errors in identity or classification, and improper consignment.

(6) "Facilities," as used in this section, means a contract under which Capital Metro facilities are provided to a contractor or subcontractor by Capital Metro for use in connection with performing one or more related contracts for supplies or services.

(7) "Capital Metro-furnished property," as used in this part, means property in the possession of, or directly acquired by, Capital Metro and subsequently made available to the contractor.

(8) "Capital Metro property," means all property owned by or leased to Capital Metro or acquired by Capital Metro under the terms of the contract. It includes both Capital Metro-furnished property and contractor-acquired property as defined in this section. "Individual item record," as used in this section, means a separate card, form, document or specific line(s) of computer data used to account for one item of property.

(9) "Plant equipment," as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

(10) "Property administrator," as used in this section, means an authorized representative of Capital Metro assigned to administer the contract requirements and obligations relating to Capital Metro property.

(11) "Real property," as used in this part, means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

(12) "Property," as used in this part, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property.

(13) "Salvage," as used in this section, means property that, because of its worn, damaged, deteriorated, or incomplete condition or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs, but has some value in excess of its scrap value.

(14) "Scrap," as used in this section, means personal property that has no value except for its basic material content.

(15) "Special test equipment," as used in this part, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including standard or general-purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

(16) "Special tooling," as used in this part, means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.

(17) "Stock record," as used in this section, means a perpetual inventory record which shows by nomenclature the quantities of each item received and issued and the balance on hand.

(18) "Summary record," as used in this section, means a separate card, form, document or specific line(s) of computer data used to account for multiple quantities of a line item of special tooling, special test equipment, or plant equipment costing less than \$5,000 per unit.

(19) "Utility distribution system," as used in this section, includes distribution and transmission lines, substations, or installed equipment forming an integral part of the system by which gas, water, steam, electricity, sewerage, or other utility services are transmitted between the outside building or structure in which the services are used and the point of origin, disposal, or connection with some other system. It does not include communication services.

(20) "Work-in-process," as used in this section, means material that has been released to manufacturing, engineering, design or other services under the contract and includes undelivered manufactured parts, assemblies, and products, either complete or incomplete.

(c) Contractor Responsibility

(1) The contractor is directly responsible and accountable for all Capital Metro property in accordance with the requirements of the contract. This includes Capital Metro property in the possession or control of a subcontractor. The contractor shall establish and maintain a system in accordance with this section to control, protect, preserve, and maintain all Capital Metro property. This property control system shall be in writing unless the property administrator determines that maintaining a written system is unnecessary. The system shall be reviewed and, if satisfactory, approved in writing by the property administrator.

(2) The contractor shall maintain and make available the records required by this section and account for all Capital Metro property until relieved of that responsibility. The contractor shall furnish all necessary data to substantiate any request for relief from responsibility.

(3) The contractor shall be responsible for the control of Capital Metro property under this section upon:

(i) Delivery of Capital Metro-furnished property into its custody or control;

(ii) Delivery, when property is purchased by the contractor and the contract calls for reimbursement by Capital Metro (this requirement does not alter or modify contractual requirements relating to passage of title);

(iii) Approval of its claim for reimbursement by Capital Metro or upon issuance for use in contract performance, whichever is earlier, of property withdrawn from contractor-owned stores and charged directly to the contract; or

(iv) Acceptance of title by Capital Metro when title is acquired pursuant to specific contract clauses or as a result of change orders or contract termination.

(4) Property to which Capital Metro has acquired a lien or title solely as a result of advance, progress, or partial payments is not subject to the requirements of this section.

(5) The contractor shall require subcontractors provided Capital Metro property under the prime contract to comply with the requirements of this section. Procedures for assuring subcontractor compliance shall be included in the contractor's property control system.

(6) If the property management finds any portion of the contractor's property control system to be inadequate, the contractor must take any necessary corrective action before the system can be approved. If the contractor and property administrator cannot agree regarding the adequacy of control and corrective action, the matter shall be referred to the contracting officer.

(7) When Capital Metro property is disclosed to be in the possession or control of the contractor but not provided under any contract, the contractor shall promptly:

(i) Record such property according to the established property control procedure; and

(ii) Furnish to the property administrator all known circumstances and data pertaining to its receipt and a statement as to whether there is a need for its retention.

(8) The contractor shall promptly report all Capital Metro property in excess of the amounts needed to complete full performance under the contracts providing it or authorizing its use.

(9) When unrecorded Capital Metro property is found, both the cause of the discrepancy and actions taken or needed to prevent recurrence shall be determined and reported to the property administrator.

(d) Receipts for Capital Metro Property

The contractor shall furnish written receipts for all or specified classes of Capital Metro property only when the property administrator deems it essential for maintaining minimum acceptable property controls. If evidence of receipt is required for contractor-acquired property, the contractor shall provide it before submitting its request for payment for the property. For Capital Metro-furnished property, the contractor shall provide the required receipt immediately upon receipt of the property.

(e) Discrepancies Incident to Shipment

(1) Capital Metro-furnished property. If overages, shortages, or damages are discovered upon receipt of Capital Metro-furnished property, the contractor shall provide a statement of the condition and apparent causes to the property administrator and to other activities specified in the approved property control system. Only that quantity of property actually received will be recorded on the official records.

(2) Contractor-acquired property. The contractor shall take all actions necessary in adjusting overages, shortages, or damages in shipment of contractor-acquired property from a vendor or supplier. However, when the

shipment has moved by Capital Metro bill of lading and carrier liability is indicated, the contractor shall report the discrepancy in accordance with paragraph (1) of this subsection.

(f) Relief from Responsibility

Unless the contract or Capital Metro provides otherwise, the contractor shall be relieved of property control responsibility for Capital Metro property by:

(1) Reasonable and proper consumption of property in the performance of the contract as determined by the property administrator;

(2) Retention by the contractor, with the approval of Capital Metro, of property for which Capital Metro has received consideration;

(3) The authorized sale of property, provided the proceeds are received by or credited to Capital Metro;

(4) Shipment from the contractor's plant, under Capital Metro instructions, except when shipment is to a subcontractor or other location of the contractor; or

(5) A determination by Capital Metro of the contractor's liability for any property that is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation, if:

(i) The determination is furnished to the contractor in writing;

(ii) Capital Metro is reimbursed where required by the determination; and

(iii) Property rendered unserviceable by damage is properly disposed of, and the determination is cross-referenced to the shipping or other documents evidencing disposal.

(g) Contractor's Liability

(1) Subject to the terms of the contract and the circumstances surrounding the particular case, the contractor may be liable for shortages, loss, damages, or destruction of Capital Metro property. The contractor may also be liable when the use or consumption of Capital Metro property unreasonably exceeds the allowances provided for by the contract, the bill of material, or other appropriate criteria.

(2) The contractor shall investigate and report to the property administrator all cases of loss, damage, or destruction of Capital Metro property in its possession or control as soon as the facts become known or when requested by the property administrator. A report shall be furnished when completed and accepted products or end items are lost, damaged, or destroyed while in the contractor's possession or control.

(3) The contractor shall require any of its subcontractors possessing or controlling Capital Metro property accountable under the contract to investigate and report all instances of loss, damage, or destruction of such property.

(h) Records and Reports of Capital Metro Property

(1) The contractor's property control records shall constitute the Capital Metro's official property records unless an exception has been authorized. The contractor shall establish and maintain adequate control records for all Capital Metro property, including property provided to and in the possession or control of a subcontractor. The property control records specified in this section are the minimum required by Capital Metro. Unless the property administrator directs otherwise, when a subcontractor has an approved property control system for Capital Metro property provided under its own prime contracts, the contractor shall use the records created and maintained under that system.

(2) The contractor's property control system shall provide financial accounts for Capital Metro -owned property in the contractor's possession or control. The system shall be subject to internal control standards and be supported by property records for such property.

(3) Official Capital Metro property records must identify all Capital Metro property and provide a complete, current, auditable record of all transactions. The contractor's system of records maintenance shall be sufficient to adequately control Capital Metro property as required by this section. The contractor's system of records maintenance, as a minimum, shall be equivalent to and maintained in the same manner as the contractor's system for maintaining records of contractor-owned property, but need not exceed the requirements of this section. The records shall be safeguarded from tampering or destruction. Records shall be accessible to authorized Capital Metro personnel.

(4) Separate property records for each contract are desirable, but a consolidated property record may be maintained if it provides the required information.

(5) Special tooling and special test equipment fabricated from materials that are the property of Capital Metro shall be recorded as Capital Metro-owned immediately upon fabrication. Special tooling and special test equipment fabricated from materials that are the property of the contractor shall be recorded as Capital Metro property at the time title passes to Capital Metro.

(6) Property records of the type established for components acquired separately shall be used for serviceable components permanently removed from items of Capital Metro property as a result of modification.

(7) The contractor's property control system shall contain a system or technique to locate any item of Capital Metro property within a reasonable period of time.

(i) Basic Information

(1) Unless summary records are used as authorized under paragraph (b) of this section, the contractor's property control records shall provide the following basic information for every item of Capital Metro property in the contractor's possession, regardless of value:

- (i) The name, description, and Stock Number (if furnished by Capital Metro or available in the property control system).
- (ii) Quantity received (or fabricated), issued, and on hand.
- (iii) Unit price (and unit of measure).
- (iv) Contract number or equivalent code designation.
- (v) Location.
- (vi) Disposition.
- (vii) Posting reference and date of transaction.

(2) Summary records are normally adequate for special tooling, special test equipment, and plant equipment costing less than \$5,000 per unit, except where Capital Metro determines that individual item records are necessary for effective control, calibration, or maintenance. Summary records shall provide the information listed in paragraphs (1)(i) through (1)(vii) of this section, but may reference a general location, provided the contractor can locate the property within a reasonable period of time.

(j) Records of Pricing Information

(1) Requirement for unit prices.

(i) The contractor's property control system shall contain the unit price for each item of Capital Metro property except as provided in (2) of this section. When a contractor records the unit price of property on other than the quantitative inventory records, those supplementary records shall become part of the official Capital Metro property records.

(ii) The requirement that unit prices be contained in the official Capital Metro property records does not apply to those separate property records located at a contractor's secondary sites and subcontractor plants; provided, that-

(A) Records maintained by the prime contractor at its primary site include unit prices; and

(B) The prime contractor agrees to furnish actual or estimated unit prices to the secondary site or subcontractor as the need arises.

(iii) When definite information as to unit price cannot be obtained, reasonable estimates will be used.

(2) Determining unit price.

(i) Contractor-acquired and contractor-fabricated property. Except for items fabricated by nonprofit organizations for research and development purposes, the unit price of contractor-acquired and contractor-fabricated property shall be determined in accordance with the system established by the contractor in conformance with consistently applied sound accounting principles. Generally, separate unit prices should be applied to items of special tooling and special test equipment fabricated or acquired by the contractor. However, if the contractor's accounting system is acceptable, and if maintaining detailed cost records results in excessive accounting cost or is otherwise impracticable, group pricing may be used for special tooling, special test equipment, and work-in-process in accordance with the contractor's acceptable cost accounting system. All processed material, fabricated parts, components, and assemblies charged to the contractor's work-in-process inventory, including items in temporary storage while awaiting processing, may be considered as work-in-process for this purpose.

(ii) Capital Metro-furnished property. Capital Metro shall determine and furnish to the contractor the unit price of Capital Metro-furnished property. Transportation and installation costs shall not generally be considered as part of the unit price for this purpose. Normally, the unit price of Capital Metro-furnished property will be provided on the document covering shipment of the property to the contractor. In the event the unit price is not provided on the document, the contractor will take action to obtain the information.

(k) Records of Material

(1) General. All Capital Metro material furnished to the contractor, as well as other material to which title has passed to Capital Metro by reason of allocation from contractor-owned stores or purchase by the contractor for direct charge to a Capital Metro contract or otherwise, shall be recorded in accordance with the contractor's property control system and the requirements of this section.

(2) Consolidated stock record. When a contractor has more than one Capital Metro contract under which Capital Metro material is provided, a consolidated record for materials may be authorized by the property administrator, provided, the total quantity of any item is allocated to each contract by contract number and each requisition of material from contractor-owned stores is charged to the contract on which the material is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.

(3) Custodial records. The contractor shall maintain custodial records for tool crib items, guard force items, protective clothing, and other items issued to individuals for use in their work.

(4) Use of receipt and issue documents. The property administrator may authorize the contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of Capital Metro-provided material that is issued for immediate consumption and is not entered in the inventory record as a matter of sound business practice. This method of control may be authorized for-

(i) Material charged through overhead;

(ii) Material under research and development contracts;

(iii) Subcontracted or outside production items;

(iv) Nonstock or special items;

(v) Items that are produced for direct charge to a contract, or are acquired and issued for installation upon receipt, and involve no spoilage; and

(vi) Items issued from contractor-owned inventory direct to production or maintenance, etc.

(5) The contractor shall take physical inventories of material in stores included in the systems (other than work-in-process) at least annually, extend and reconcile prices to the quantitative balance for each item, and record adjustments in the stock record and financial inventory control accounts. Such physical inventories and adjustments, as well as equitable distribution to cost accounts of any inventory losses, shall be reviewed by and are subject to the approval of the property administrator.

(l) Records of Real Property

The contractor shall maintain an itemized record of the description, location, acquisition cost, and disposition of all Capital Metro real property (including unimproved real property); all alterations, all construction work, and sites connected with such alteration and construction, acquired by purchase, lease, or otherwise. These records, including maps, drawings, plans, specifications, and supplementary data where necessary, shall-

(1) Be complete,

(2) Show the original cost of the property and improvements and the cost of any changes and additions, and

(3) Be appropriately indexed.

(m) Records of Scrap or Salvage

(1) The contractor shall maintain records of all scrap or salvage generated. These records shall conform to the contractor's established system of scrap and salvage control approved by the property administrator.

(2) The contractor's property control system shall provide the following information:

(i) Contract number, if practical, or equivalent code designation from which the scrap or salvage derived.

(ii) Nomenclature or description of salvable items or classification (material content) of scrap.

(iii) Quantity on hand.

(iv) Posting reference and date of transaction.

(v) Disposition.

(n) Records of Related Data and Information

The contractor shall maintain property control and accountability, in accordance with sound business practice, of manufacturing or assembly drawings; installation, operation, repair, or maintenance instructions; and other similar information furnished to the contractor by Capital Metro or generated or acquired by the contractor under the contract and for which title vests in Capital Metro. The requirements of this section do not otherwise apply to such property.

(o) Reports of Capital Metro Property

(1) The contractor's property control system shall provide annually the total acquisition cost of Capital Metro property for which the contractor is accountable under each contract, including Capital Metro property at subcontractor plants and alternate locations. The following classifications (property classifications may be varied to meet individual agency needs) shall be reported:

- (i) Land and rights therein.
- (ii) Other real property, including utility distribution systems, buildings, structures, and improvements thereto.
- (iii) Plant equipment.
- (iv) Special tooling.
- (v) Special test equipment.
- (vi) Material.
- (vii) Agency peculiar property.

(2) The contractor shall report the information under paragraph (1) as directed by the contracting officer.

(p) IDENTIFICATION

(1) UPON RECEIPT OF CAPITAL METRO PROPERTY, THE CONTRACTOR SHALL PROMPTLY:

- (I) IDENTIFY THE PROPERTY IN ACCORDANCE WITH CAPITAL METRO PROCEDURES;**
- (II) MARK THE PROPERTY IN ACCORDANCE WITH THIS SECTION; AND**
- (III) RECORD THE PROPERTY IN ITS PROPERTY CONTROL RECORDS.**

(2) Except for the following, all Capital Metro property shall be marked with an indication of Capital Metro ownership:

- (i) Items issued to individuals for use in their work (e.g., protective clothing or tool crib tools) where adequate physical control is maintained over the items.
- (ii) Property of a bulk type, or where its general nature of packing or handling precludes adequate marking.
- (iii) Material that is commingled with contractor's
- (iv) Where the property administrator agrees that marking is impractical.
- (v) Exempted items shall be entered and described on the accountable property records.

(3) In addition to marking with an indication of Capital Metro ownership, the following property shall be marked with a serial number in accordance with procedures approved by the property administrator:

- (i) Special tooling.
- (ii) Special test equipment.
- (iii) Components of special test equipment that have an acquisition cost of \$5,000 or more and are incorporated in a manner that makes removal and reutilization feasible and economical.

(iv) Plant equipment.

(v) Accessory or auxiliary equipment associated with a specific item of plant equipment that is recorded on the property records, if necessary to assure return with the associated basic item.

(4) The contractor shall record assigned numbers on all applicable documents pertaining to the property control system.

(5) If the property is included in the Capital Metro system, the contractor may use the property's registration number as the serial number. The contractor should obtain the registration number through the property administrator.

(6) The markings in paragraphs (2) and (3) of this section shall be:

(i) securely affixed to the property,

(ii) legible, and

(iii) conspicuous. Examples of appropriate markings are bar coding, decals, and stamping. If marking will damage the property or is otherwise impractical, the contractor shall promptly notify the property administrator and ask for the item to be exempted (see paragraph (2) of this section). Markings shall be removed or obliterated when Capital Metro property is sold, scrapped, or donated.

(q) Segregation of Capital Metro Property

Capital Metro property shall be kept physically separate from contractor-owned property. However, when advantageous to Capital Metro and consistent with the contractor's authority to use such property, the property may be commingled-

(1) When Capital Metro property is special tooling, special test equipment, or plant equipment clearly identified and recorded as Capital Metro property;

(2) When-

(i) Scrap of a uniform nature is produced from both Capital Metro-owned and contractor-owned material and physical segregation is impracticable,

(ii) Scrap produced from Capital Metro-owned material is insignificant in consideration of the cost of segregation and control, or

(iii) Capital Metro contracts involved are fixed-price and provide for the retention of the scrap by the contractor; or

(3) When otherwise approved by the property administrator.

(r) Physical Inventories

The contractor shall periodically, but not less than every two (2) years, physically inventory all Capital Metro property (except materials issued from stock for manufacturing, research, design, or other services required by the contract) in its possession or control and shall cause subcontractors to do likewise. The contractor, with the approval of the property administrator, shall establish the type, frequency, and procedures. These may include electronic reading, recording and reporting or other means of reporting the existence and location of the property and reconciling the records. Type and frequency of inventory should be based on the contractor's established practices, the type and use of the Capital Metro property involved, or the amount of Capital Metro property involved and its monetary value, and the reliability of the contractor's property control system. Type and frequency of physical inventories normally will not vary between contracts being performed by the contractor but may vary with the types of property being

controlled. Personnel who perform the physical inventory shall not be the same individuals who maintain the property records or have custody of the property unless the contractor's operation is too small to do otherwise.

(s) Inventories Upon Termination or Completion

(1) General. Immediately upon termination or completion of a contract, the contractor shall perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Capital Metro property applicable to the contract, unless the requirement is waived as provided in paragraph (2) of this section.

(2) Exception. The requirement for physical inventory at the completion of a contract may be waived by the property administrator when the property is authorized for use on a follow-on contract; provided, that-

(i) Experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies; and

(ii) The contractor provides a statement indicating that record balances have been transferred in lieu of preparing a formal inventory list and that the contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

(3) Listings for disposal purposes.

(i) Standard items that have been modified may be described on listings for disposal purposes as standard items with a general description of the modification.

(ii) Items that have been fabricated, such as test equipment, shall be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.

(t) Reporting Results of Inventories

The contractor shall, as a minimum, submit the following to the property administrator promptly after completing the physical inventory:

(1) A listing that identifies all discrepancies disclosed by a physical inventory.

(2) A signed statement that physical inventory of all or certain classes of Capital Metro property was completed on a given date and that the official property records were found to be in agreement except for discrepancies reported.

(u) Quantitative and Monetary Control

When requested by Capital Metro, the contractor's reports of results of physical inventory shall be prepared on a quantitative and monetary basis and segregated by categories of property.

(v) Care, Maintenance, and Use

The contractor shall be responsible for the proper care, maintenance, and use of Capital Metro property in its possession or control from the time of receipt until properly relieved of responsibility, in accordance with sound industrial practice and the terms of the contract. The removal of Capital Metro property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

(w) Contractor's Maintenance Program

(1) Consistent with the terms of the contract, the contractor's maintenance program shall provide for-

(i) Disclosure of need for and the performance of preventive maintenance;

(ii) Disclosure and reporting of need for capital rehabilitation; and

(iii) Recording of work accomplished under the program.

(2) Preventive maintenance is maintenance performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences. An effective preventive maintenance program shall include at least-

(i) Inspection of buildings at periodic intervals to assure detection of deterioration and the need for repairs;

(ii) Inspection of plant equipment at periodic intervals to assure detection of maladjustment, wear, or impending breakdown;

(iii) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;

(iv) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;

(v) Removal of sludge, chips, and cutting oils from equipment that will not be used for a period of time;

(vi) Taking necessary precautions to prevent deterioration caused by contamination, corrosion, and other substances; and

(vii) Proper storage and preservation of accessories and special tools furnished with an item of plant equipment but not regularly used with it.

(3) The contractor's maintenance program shall provide for disclosing and reporting the need for major repair, replacement, and other capital rehabilitation work for Capital Metro property in its possession or control.

(4) The contractor shall keep records of maintenance actions performed and any deficiencies in the Capital Metro property discovered as a result of inspections.

(x) Use of Capital Metro Property

(1) The contractor's procedures shall be in writing and adequate

(i) To assure that Capital Metro property will be used only for those purposes authorized in the contract and that any required approvals will be obtained, and

(ii) To provide a basis for determining and allocating rental charges.

(2) With respect to plant equipment with an acquisition value of \$5,000 or more, the procedures, as a minimum, shall-

(i) Establish a minimum level of use below which an analysis of need shall be made and retention justified, except for inactive plants and equipment retained for mobilization (the use level may be established for individual items or families of items, depending upon circumstances of use);

(ii) Provide for recording authorized and actual use consistent with the established use levels;

(iii) Require periodic analyses of production needs for plant equipment utilization based upon known requirements; and

(iv) Provide for prompt reporting to Capital Metro of all plant equipment for which retention is not justified.

(y) Property in Possession of Subcontractors

The contractor shall require any of its subcontractors possessing or controlling Capital Metro property to adequately care for and maintain that property and assure that it is used only as authorized by the contract. The contractor's approved property control system shall include procedures necessary for accomplishing this responsibility.

(z) Audit of Property Control System

Capital Metro may audit the contractor's property control system as frequently as conditions warrant. These audits may take place at any time during contract performance, upon contract completion or termination, or at any time thereafter during the period the contractor is required to retain such records. The contractor shall make all such records and related correspondence available to the auditors.

60. MISCELLANEOUS

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

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

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

If to the Authority: Capital Metropolitan Transportation Authority
Attn: Chief Contracting Officer
2910 E. 5th Street
Austin, Texas 78702

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

(c) In the event the Authority finds it necessary to employ legal counsel to enforce its rights under this Contract, or to bring an action at law, or other proceeding against the Contractor to enforce any of the terms, covenants or conditions herein, the Contractor shall pay to the Authority its reasonable attorneys' fees and expenses, regardless of whether suit is filed.

(d) If any term or provision of this Contract or any portion of a term or provision hereof or the application thereof to any person or circumstance shall, to any extent, be void, invalid or unenforceable, the remainder of this Contract will remain in full force and effect unless removal of such invalid terms or provisions destroys the legitimate purpose of the Contract in which event the Contract will be terminated.

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

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

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

- (h) All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Authority, whether provided by law, equity, statute, or otherwise. The election of any one or more remedies the Authority will not constitute a waiver of the right to pursue other available remedies.
- (i) The Contractor shall not assign the whole or any part of this Contract or any monies due hereunder without the prior written consent of the Contracting Officer. No assignment shall relieve the Contractor from any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void.
- (j) The failure of the Authority to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver or deprive the Authority thereafter to insist upon strict adherence to that term or other terms of this Contract. Furthermore, the Authority is a governmental entity and nothing contained in this Contract shall be deemed a waiver of any rights, remedies or privileges available by law.
- (k) This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any dispute arising with respect to this Contract shall be resolved in the state or federal courts of the State of Texas, sitting in Travis County, Texas and the Contractor expressly consents to the personal jurisdiction of these courts.
- (l) This Contract is subject to the Texas Public Information Act, Tex. Govt. Code, Chapter 552.
- (m) The Contractor represents, warrants and covenants that: (a) it has the requisite power and authority to execute, deliver and perform its obligations under this Contract; and (b) it is in compliance with all applicable laws related to such performance.
- (n) The person signing on behalf of the Contractor represents for himself or herself and the Contractor that he or she is duly authorized to execute this Contract.
- (o) No term or provision of this Contract is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation for a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
- (p) Capital Metro is a governmental entity and nothing in this Contract shall be deemed a waiver of any rights or privileges under the law.
- (q) Funding for this Contract after the current fiscal year is subject to revenue availability and appropriation of funds in the annual budget approved by the Authority's Board of Directors.
- (r) Time is of the essence for all delivery, performance, submittal, and completion dates in this Contract.

61. DRUG AND ALCOHOL TESTING PROGRAM

(a) The Authority and its Contractors and Subcontractors are required to comply with the requirements of 49 C.F.R. Part 219 with no exceptions. The Contractor has established and implemented, or agrees to establish and implement, and cause its applicable Subcontractors to establish and implement, a drug and alcohol testing program for regulated employees (including volunteers, employees and probationary employees) whose duties include inspection, construction, maintenance or repair of roadway track; bridges, roadway, signal and communications systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a tack and flagmen and watchmen/lookouts ("Part 219 employees") that complies with 49 C.F.R. Part 219, produce any documentation necessary to establish its compliance with Part 219, and permit any authorized representative of the United States Department of Transportation or the Federal Railroad Administration ("FRA") and the Authority to inspect the facilities and records associated with the implementation and operation of the drug and alcohol testing program as required under 49 C.F.R. Part 219, including the review of the testing process.

(b) **Prior to the performance of any work under the Contract by any Part 219 employees on or after June 12, 2017,** the Contractor shall furnish the Authority, and cause each Subcontractor that provides Part 219 employees to

perform work under the Contract to furnish the Authority, with copies of all supporting compliance documentation including but not limited to the following:

- (1) A copy of the Contractor's 49 C.F.R. Part 219 Railroad Contractor Compliance Plan.
- (2) A copy of the Federal Railroad Administration's acceptance letter for 49 C.F.R. Part 219 Railroad Contractor Compliance Plan.
- (3) A certified list of the Contractor's Part 219 grandfathered employees (June 12, 2017).
- (4) A certified list of employees who are currently regulated by 49 C.F.R. Part 219 Railroad Contractor Compliance Plan Part 219.
- (5) Copies of the employees DOT 40-25 previous employer drug and alcohol record covered by 49 C.F.R. Part 219 Railroad Contractor Compliance Plan.
- (6) Updated list of the Contractor's employees when an employee status has changed or employee becomes ineligible, along with an updated certification required in subparagraph (4).
- (7) Rule G Observations when requested by the Authority.
- (8) Management Information System Report (MIS) each six (6) months.

Access to the work site will be prohibited to employees not named in the certified list required by subparagraphs (4) and (6).

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

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

(e) The Contractor shall include the substance of subparagraph (a)-(e) of this paragraph, in each applicable Subcontract under this Contract.

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

62. 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.

63. SUSTAINABILITY

The Contractor is to provide the Authority with all information that the Authority may reasonably request regarding the environmental impact of the supply and use of materials the contractor selects for use in this contract. Products used by the Contractor can provide various environmental benefits, including resource efficiency, reduced toxicity, durability, and recycled content.

The Contractor is encouraged to suggest economically viable amendments to the Authority's requirements which may improve environmental performance in the carrying out of the service or works included in this contract.

64. NONWAIVER OF RIGHTS

Failure or delay of the Authority (a) to insist in any one or more instances upon performance of any of the terms and conditions of this contract or (b) to exercise any rights or remedies, or (c) to approve the Services shall not release Contractor from any of its obligations under this contract and shall not be construed as a waiver or relinquishment of the Authority's rights (a) to require strict performance of Contractor's obligations or (b) to require the future performance of any terms and conditions, but the Contractor's obligations with respect to such performance shall continue in full force and effect.